

AMENDED IN SENATE AUGUST 18, 2011

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 ~~Sections 17053.86, 23686, and Section 25136.1~~ to, to add and repeal ~~Section 6377~~ *Sections 6377, 17053.86, and 23686* of, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, 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: 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, *and before January 1, 2017*, 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~~ \$500,000,000 for each calendar year.

(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~~ 2015, *whichever* 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.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. 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 by
11 the qualified person and introduced into the process and ending at
12 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.

33 (2) "Fabricating" means to make, build, create, produce, or
34 assemble components or property to work in a new or different
35 manner.

36 (3) "Manufacturing" means the activity of converting or
37 conditioning tangible personal property by changing the form,
38 composition, quality, or character of the property for ultimate sale

1 at retail or use in the manufacturing of a product to be ultimately
2 sold at retail. Manufacturing includes any improvements to tangible
3 personal property that result in a greater service life or greater
4 functionality than that of the original property.

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

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

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

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

29 (A) A new trade or business that is primarily engaged in those
30 lines of business classified in Industry Groups 3111 to 3399,
31 inclusive, of the North American Industry Classification System
32 (NAICS) published by the United States Office of Management
33 and Budget (OMB), 2007 edition. In determining whether a trade
34 or business activity qualifies as a new trade or business, the
35 following rules shall apply:

36 (i) In any case where a person purchases or otherwise acquires
37 all or any portion of the assets of an existing trade or business,
38 irrespective of the form of entity, that is doing business in this state
39 (within the meaning of Chapter 2 (commencing with Section
40 23101) of Part 11), the trade or business thereafter conducted by

1 that person, or any related person, shall not be treated as a new
2 business if the aggregate fair market value of the acquired assets,
3 including real, personal, tangible, and intangible property, used
4 by that person, or any related person, in the conduct of his or her
5 trade or business exceeds 20 percent of the aggregate fair market
6 value of the total assets of the trade or business being conducted
7 by the person, or any related person. For purposes of this
8 subparagraph only, the following rules shall apply:

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

14 (II) Any acquired assets that constituted property described in
15 Section 1221(a) of the Internal Revenue Code in the hands of the
16 transferor shall not be treated as assets acquired from an existing
17 trade or business, unless those assets also constitute property
18 described in Section 1221(a) of the Internal Revenue Code in the
19 hands of the acquiring person or related person.

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

31 (iii) In any case where a person, including all related persons,
32 is engaged in trade or business activities wholly outside of this
33 state and that person first commences doing business in this state
34 (within the meaning of Chapter 2 (commencing with Section
35 23101) of Part 11) on or after June 30, 2012, other than by purchase
36 or other acquisition described in clause (i), the trade or business
37 activity shall be treated as a new business.

38 (iv) In any case where the legal form under which a trade or
39 business activity is being conducted is changed, the change in form
40 shall be disregarded and the determination of whether the trade or

1 business activity is a new business shall be made by treating the
2 person as having purchased or otherwise acquired all or any portion
3 of the assets of an existing trade or business under the rules of
4 clause (i).

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

8 (B) A trade or business, other than a new trade or business as
9 described in subparagraph (A), that is primarily engaged in those
10 lines of business classified in Industry Groups 3111 to 3399,
11 inclusive, of the NAICS published by the United States OMB,
12 2007 edition.

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

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

18 (10) “Related person” means any person that is related to another
19 person under either Section 267 or 318 of the Internal Revenue
20 Code.

21 (11) “Research and development” means those activities that
22 are described in Section 174 of the Internal Revenue Code or in
23 any regulations thereunder.

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

26 (A) Machinery and equipment, including component parts and
27 contrivances such as belts, shafts, moving parts, and operating
28 structures.

29 (B) All equipment or devices used or required to operate,
30 control, regulate, or maintain the machinery, including, without
31 limitation, computers, data-processing equipment, and computer
32 software, together with all repair and replacement parts with a
33 useful life of one or more years therefor, whether purchased
34 separately or in conjunction with a complete machine and
35 regardless of whether the machine or component parts are
36 assembled by the qualified person or another party.

37 (C) Property used in pollution control that meets or exceeds
38 standards established by this state or any local or regional
39 governmental agency within this state.

1 (D) Special purpose buildings and foundations used as an
2 integral part of the manufacturing, processing, refining, or
3 fabricating process, or that constitute a research or storage facility
4 used during the manufacturing process. Buildings used solely for
5 warehousing purposes after completion of the manufacturing
6 process are not included.

7 (E) Property used in recycling.

8 (13) “Tangible personal property” does not include any of the
9 following:

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

11 (B) Furniture, inventory, equipment used in the extraction
12 process, or equipment used to store finished products that have
13 completed the manufacturing process.

14 (14) “Useful life” for tangible personal property that a qualified
15 person treats as having a useful life of one or more years for state
16 income or franchise tax purposes shall be deemed to have a useful
17 life of one or more years for purposes of this section. Useful life
18 for tangible personal property that a qualified person treats as
19 having a useful life of less than one year for state income or
20 franchise tax purposes shall be deemed to have a useful life of less
21 than one year for purposes of this section.

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

30 (d) (1) Notwithstanding subdivision (a), the exemption
31 established by this section shall not apply with respect to any tax
32 levied pursuant to Sections 6051.2, 6051.5, 6051.8, 6201.2, 6201.5,
33 and 6201.8, or pursuant to Article XIII of the California
34 Constitution.

35 (2) Notwithstanding any other law, the exemption established
36 by this section shall not apply to any tax levied by a county, city,
37 or district pursuant to, or in accordance with, the Bradley-Burns
38 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
39 with Section 7200)) or the Transactions and Use Tax Law (Part
40 1.6 (commencing with Section 7251)).

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

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

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

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

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

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

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

4 17053.80. (a) There shall be allowed a credit against the “net
5 tax,” as defined in Section 17039, for each net increase in qualified
6 full-time employees, as specified in subdivision (c), hired during
7 the taxable year by a qualified employer, as follows:

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

11 (2) For each taxable year beginning on or after January 1, 2011,
12 *and before January 1, 2015*, the credit shall be equal to four
13 thousand dollars (\$4,000).

14 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

5 (4) “Qualified employer” means either of the following:

6 (A) For each taxable year beginning on or after January 1, 2009,
7 and before January 1, 2011, a taxpayer that, as of the last day of
8 the preceding taxable year, employed a total of 20 or fewer
9 employees.

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

13 (5) “Qualified wages” means wages subject to Division 6
14 (commencing with Section 13000) of the Unemployment Insurance
15 Code.

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

18 ~~(A)~~

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

23 ~~(B)~~

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

27 (B) *If either of the taxable years used to compute the net increase*
28 *in qualified full-time employees in paragraph (1) of subdivision*
29 *(c) is a period of less than 12 months, the computation of “annual*
30 *full-time equivalents” as prescribed in subparagraph (A) shall be*
31 *annualized by adjusting the number of hours or weeks, respectively,*
32 *in the formula so that each annual full-time equivalent equals a*
33 *12-month equivalent.*

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

37 (1) (A) The net increase in qualified full-time employees shall
38 be determined on an annual full-time equivalent basis by
39 subtracting from the amount determined in subparagraph (C) the
40 amount determined in subparagraph (B).

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

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

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

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

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

17 (f) For purposes of this section:

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

21 (2) In determining whether the taxpayer has first commenced
22 doing business in this state during the taxable year, the provisions
23 of subdivision (f) of Section 17276.20, without application of
24 paragraph (7) of that subdivision, shall apply.

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

29 (B) For purposes of this paragraph, the cut-off date shall be the
30 earlier date of the following:

31 (i) The last day of the calendar quarter within which the
32 Franchise Tax Board estimates it will have received timely filed
33 original returns claiming credits under this section and Section
34 23623 that cumulatively total four hundred million dollars
35 (\$400,000,000) for all taxable years.

36 (ii) December 31, ~~2012~~ 2015.

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

39 (3) (A) The determinations of the Franchise Tax Board with
40 respect to the cut-off date, the date a return is received, and whether

1 a return has been timely filed for purposes of this subdivision shall
2 not be reviewed in any administrative or judicial proceeding.

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

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

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

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 (i) This section shall remain in effect only until December 1,
27 ~~2013~~ 2016, and as of that date is repealed.

28 SEC. 4. Section 17053.86 is added to the Revenue and Taxation
29 Code, to read:

30 17053.86. (a) (1) For each taxable year beginning on or after
31 January 1, 2012, *and before January 1, 2017*, there shall be allowed
32 as a credit against the “net tax,” as defined in Section 17039, an
33 amount equal to 75 percent of the amount contributed during the
34 taxable year by a taxpayer to either the ~~K-12 Investment Tax Credit~~
35 ~~Program Special Fund~~ or the Higher Education Investment Tax
36 Credit Program Special Fund.

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

38 (b) (1) The aggregate amount of credit that may be allocated
39 pursuant to this section and Section 23686 shall not exceed ~~one~~
40 ~~billion dollars (\$1,000,000,000) for the 2012 calendar year and~~

1 ~~one billion dollars (\$1,000,000,000)~~ *five hundred million dollars*
2 *(\$500,000,000) for the 2012 calendar year and five hundred million*
3 *dollars (\$500,000,000) for each calendar year thereafter.*

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

10 (B) For purposes of this subdivision, the cut-off date shall be
11 the last day of the calendar quarter within which the Franchise Tax
12 Board estimates it will have received timely filed original returns
13 claiming credits under this section and Section 23686 *totaling five*
14 *hundred million dollars (\$500,000,000) for the calendar year.*

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

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

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

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

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

36 ~~(d) (1) The K-12 Investment Tax Credit Program Special Fund~~
37 ~~is hereby created as a special fund in the State Treasury consisting~~
38 ~~of funds contributed by taxpayers. Notwithstanding Section 13340~~
39 ~~of the Government Code, all revenue in this special fund is~~
40 ~~continuously appropriated, without regard to fiscal year, as follows:~~

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

6 ~~(B) Any surplus moneys shall be allocated to the Superintendent~~
7 ~~of Public Instruction for educational purposes.~~

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

19 ~~(e)~~

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

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

1 Community Colleges are encouraged to publicly acknowledge
2 taxpayers that contribute to this program in honor of their
3 institutions.

4 ~~(f)~~

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

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

14 (f) *This section shall remain in effect only until December 1,*
15 *2017, and as of that date is repealed.*

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

26 23623. (a) There shall be allowed a credit against the “tax,”
27 as defined in Section 23036, for each net increase in qualified
28 full-time employees, as specified in subdivision (c), hired during
29 the taxable year by a qualified employer as follows:

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

33 (2) For each taxable year beginning on or after January 1, 2011,
34 *and before January 1, 2015*, the credit shall be equal to four
35 thousand dollars (\$4,000).

36 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

27 (4) “Qualified employer” means either of the following:

28 (A) For each taxable year beginning on or after January 1, 2009,
29 and before January 1, 2011, a taxpayer that, as of the last day of
30 the preceding taxable year, employed a total of 20 or fewer
31 employees.

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

35 (5) “Qualified wages” means wages subject to Division 6
36 (commencing with Section 13000) of the Unemployment Insurance
37 Code.

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

40 (A)

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

5 ~~(B)~~

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

9 *(B) If either of the taxable years used to compute the net increase*
10 *in qualified full-time employees in paragraph (1) of subdivision*
11 *(c) is a period of less than 12 months, the computation of “annual*
12 *full-time equivalentents” as prescribed in subparagraph (A) shall be*
13 *annualized by adjusting the number of hours or weeks, respectively,*
14 *in the formula so that each annual full-time equivalent equals a*
15 *12-month equivalent.*

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

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

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

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

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

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

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

39 (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 (g) of Section 24416.20, without application of
7 paragraph (7) of that subdivision, shall apply.

8 (g) (1) (A) Credit under this section and Section 17053.80 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 earlier date of the following:

14 (i) The last day of the calendar quarter within which the
15 Franchise Tax Board estimates it will have received timely filed
16 original returns claiming credits under this section and Section
17 17053.80 that cumulatively total four hundred million dollars
18 (\$400,000,000) for all taxable years.

19 (ii) December 31, ~~2012~~ 2015.

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

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

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

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

36 (h) (1) The Franchise Tax Board may prescribe rules,
37 guidelines, or procedures necessary or appropriate to carry out the
38 purposes of this section, including any guidelines regarding the
39 limitation on total credits allowable under this section and Section
40 17053.80 and guidelines necessary to avoid the application of

1 paragraph (2) of subdivision (f) through split-ups, shell
2 corporations, partnerships, tiered ownership structures, or
3 otherwise.

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

9 (i) This section shall remain in effect only until December 1,
10 2013 2016, and as of that date is repealed.

11 SEC. 8. Section 23686 is added to the Revenue and Taxation
12 Code, to read:

13 23686. (a) (1) For each taxable year beginning on or after
14 January 1, 2012, *and before January 1, 2017*, there shall be allowed
15 as a credit against the “tax,” as defined in Section 23036, an amount
16 equal to 75 percent of the amount contributed during the taxable
17 year by a taxpayer to ~~either the K-12 Investment Tax Credit~~
18 ~~Program Special Fund, created by subdivision (d) of Section~~
19 ~~17053.86, or the Higher Education Investment Tax Credit Program~~
20 ~~Special Fund, created by subdivision (e) (d) of Section 17053.86.~~

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

22 (b) (1) The aggregate amount of credit that may be allocated
23 pursuant to this section and Section 17053.86 shall not exceed ~~one~~
24 ~~billion dollars (\$1,000,000,000) for the 2012 calendar year and~~
25 ~~one billion dollars (\$1,000,000,000) five hundred million dollars~~
26 ~~(\$500,000,000) for the 2012 calendar year and five hundred million~~
27 ~~dollars (\$500,000,000) for each calendar year thereafter.~~

28 (2) (A) Credit under this section and Section 17053.86 shall be
29 allowed only for credits claimed on timely filed original returns
30 received by the Franchise Tax Board on or before the cut-off date
31 established by the Franchise Tax Board and shall be allocated on
32 a first-come-first-served basis. The date a return is received shall
33 be determined by the Franchise Tax Board.

34 (B) For purposes of this subdivision, the cut-off date shall be
35 the last day of the calendar quarter within which the Franchise Tax
36 Board estimates it will have received timely filed original returns
37 claiming credits under this section and Section 17053.86 *totaling*
38 *five hundred million dollars (\$500,000,000) for the calendar year.*

39 (3) (A) The determinations of the Franchise Tax Board with
40 respect to the cut-off date, the date a return is received, and whether

1 a return has been timely filed for purposes of this subdivision shall
2 not be reviewed in any administrative or judicial proceeding.

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

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

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

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

20 (d) (1) The Franchise Tax Board may prescribe rules,
21 guidelines, or procedures necessary or appropriate to carry out the
22 purposes of this section, including any guidelines regarding the
23 limitation on total credits allowable under this section and Section
24 17053.86.

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

30 (e) *This section shall remain in effect only until December 1,*
31 *2017, and as of that date is repealed.*

32 SEC. 9. Section 25113 of the Revenue and Taxation Code, as
33 added by Section 4 of Chapter 657 of the Statutes of 2003, is
34 amended to read:

35 25113. (a) Except as provided in subdivision (f), for taxable
36 years beginning on or after January 1, 2003, the election provided
37 for in Section 25110 shall be made on an original, timely filed
38 return for the year of the election. The election will be considered
39 valid if both of the following conditions are satisfied:

1 (1) The tax is computed in a manner consistent with a
2 water's-edge election.

3 (2) A written notification of election is filed with the return on
4 a form prescribed by the Franchise Tax Board. Pursuant to
5 regulations promulgated under this section, the Franchise Tax
6 Board may accept the filing of other objective evidence that
7 supports the conclusion that a water's-edge election was intended
8 in lieu of notification on the designated form.

9 (b) Except as otherwise provided, a water's-edge election shall
10 be effective only if made by every member of the self-assessed
11 combined reporting group that is subject to taxation under this
12 part.

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

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

21 (A) It has a parent corporation that is an electing taxpayer that
22 included the income and apportionment factors of the nonelecting
23 taxpayer in the self-assessed combined reporting group reflected
24 in the electing parent's timely filed original return, including a
25 group return.

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

34 (3) For purposes of this subdivision, a "parent corporation" of
35 the taxpayer is a corporation that owns or constructively owns
36 stock possessing more than 50 percent of the voting power of the
37 taxpayer as determined under subdivisions (e) and (f) of Section
38 25105.

39 (4) If a corporation that is a member of a combined reporting
40 group is not itself subject to taxation under this part in the year for

1 which the water's-edge election is made, but subsequently becomes
2 subject to taxation under this part, that corporation shall be deemed
3 to have elected with the other taxpayer members of the combined
4 reporting group.

5 (5) A taxpayer that is engaged in more than one apportioning
6 trade or business, as defined in paragraph (2) of subdivision (c) of
7 Section 25128, may make a separate election for each apportioning
8 trade or business.

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

11 (1) Except as otherwise provided in this subdivision, if one or
12 more electing taxpayer members of a combined reporting group
13 later become disaffiliated or otherwise cease to be included in the
14 combined reporting group, the water's-edge election shall remain
15 in effect as to both the departing taxpayer members and any
16 remaining taxpayer members.

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

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

36 (4) (A) If a taxpayer with an election that has been terminated
37 under paragraph (9) or (10) becomes a member of a new unitary
38 affiliate group that includes another electing or nonelecting
39 taxpayer not affected by those paragraphs, any water's-edge
40 election of the other taxpayer member, if applicable, shall

1 terminate, and any restrictions on making a new water's-edge
2 election, relating to an election terminated under those paragraphs,
3 shall apply to all taxpayer members of the new unitary affiliate
4 group if the total business assets of the taxpayer with the terminated
5 election, and its component unitary group, if any, is larger than
6 the other taxpayer, and its component unitary group, if any.
7 Otherwise, paragraph (2) shall apply, if applicable. If paragraph
8 (2) does not apply, all taxpayer members of the new unitary affiliate
9 group will be treated as nonelecting taxpayers that are not subject
10 to any restrictions on making a new water's-edge election.

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

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

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

1 (C) For purposes of applying the business asset test of this
2 paragraph, the term “business assets” shall have the same meaning
3 as subparagraph (A) of paragraph (6), except that the business
4 assets of other members of the unitary affiliate group that are not
5 taxpayers shall not be taken into account.

6 (D) Notwithstanding subparagraph (A), nonelecting taxpayers
7 may not be deemed to have made a water’s-edge election if the
8 Franchise Tax Board audit determination described in subparagraph
9 (A) is withdrawn or otherwise overturned.

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

12 (A) “Business assets” are assets, including intangible assets,
13 other than stock of a member of the unitary affiliate group, which
14 are used in the conduct of the business of the unitary affiliate group
15 or would produce business income to the unitary affiliate group,
16 if an election were not in place, if the assets were sold. Business
17 assets shall be valued at net book value.

18 (B) The phrase “unitary affiliate group” refers to all of those
19 corporations that would constitute a unitary group if a water’s-edge
20 election were not made.

21 (C) The phrase “new unitary affiliate group” refers to a unitary
22 affiliate group that is created by a new affiliation of two or more
23 corporations, or by the addition of one or more new members to
24 an existing unitary affiliate group.

25 (D) The phrase “component unitary group” means that portion
26 of a group of corporations that have become members of a new
27 unitary affiliate group that were members of their own respective
28 unitary affiliate group prior to entering the new unitary affiliate
29 group, disregarding any corporations that did not become part of
30 the new unitary group.

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

34 (8) In the event of a merger or consolidation, the water’s-edge
35 status and election commencement date or termination date of the
36 surviving corporation shall be consistent with the result that would
37 have been obtained under paragraphs (2) to (4), inclusive, if the
38 surviving corporation had acquired the stock of the transferor
39 corporation.

1 (9) A water's-edge election may be terminated without the
2 consent of the Franchise Tax Board after it has been in effect for
3 at least 84 months. The termination shall be made on an original,
4 timely filed return for the first year in which the water's-edge
5 election is to be terminated. To be effective, the termination shall
6 be made by every taxpayer that is a member of the water's-edge
7 group in the same manner as the election provided under
8 subdivisions (a) and (b).

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

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

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

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

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

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

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

1 (2) A “group return” refers to the single return which taxpayer
2 members of a combined reporting group may elect by contract to
3 file, in the form and manner prescribed by the Franchise Tax Board,
4 in lieu of filing their own respective returns.

5 (3) A “self-assessed combined reporting group” means that
6 group of corporations whose income and apportionment factors
7 are reflected in a combined report prepared pursuant to this chapter
8 in a timely filed return, taking into account the effects of a
9 purported water’s-edge election, whether or not the membership
10 of the corporations in that combined report was correctly
11 determined.

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

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

24 (g) The amendments made to this section by the act adding this
25 subdivision shall apply to taxable years beginning on or after
26 January 1, 2011.

27 SEC. 10. Section 25128 of the Revenue and Taxation Code is
28 amended to read:

29 25128. (a) (1) Notwithstanding Section 38006, for taxable
30 years beginning on or after January 1, 2011, any apportioning trade
31 or business, other than an apportioning trade or business that is
32 described in subdivision (b) or that makes an election to apportion
33 its income in accordance with Section 25128.5, shall apportion its
34 business income in accordance with this subdivision.

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

39 (b) If an apportioning trade or business derives more than 50
40 percent of its “gross business receipts” from conducting one or

1 more qualified business activities, as defined in subdivision (c),
2 all business income of the apportioning trade or business shall be
3 apportioned to this state by multiplying business income by a
4 fraction, the numerator of which is the property factor plus the
5 payroll factor plus the sales factor, and the denominator of which
6 is three.

7 (c) For purposes of this section:

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

19 (2) “Apportioning trade or business” means a distinct trade or
20 business whose business income is required to be apportioned
21 under Sections 25101 and 25120, limited, if applicable, by Section
22 25110, using the same denominator for each of the applicable
23 payroll, property, and sales factors.

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

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

30 (5) “Gross business receipts” means gross receipts described in
31 subdivision (f) of Section 25120 (other than gross receipts from
32 sales or other transactions within an apportioning trade or business
33 between members of a group of corporations whose income and
34 apportionment factors are required to be included in a combined
35 report under Section 25101, limited, if applicable, by Section
36 25110), whether or not the receipts are excluded from the sales
37 factor by operation of Section 25137.

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

39 (A) An agricultural business activity.

40 (B) An extractive business activity.

1 (C) A savings and loan activity.

2 (D) A banking or financial business activity.

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

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

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

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

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. 11. Section 25128.5 of the Revenue and Taxation Code
20 is amended to read:

21 25128.5. (a) Notwithstanding Section 38006, for taxable years
22 beginning on or after January 1, 2011, any apportioning trade or
23 business, other than an apportioning trade or business described
24 in subdivision (b) of Section 25128, may make an irrevocable
25 annual election on an original timely filed return, in the manner
26 and form prescribed by the Franchise Tax Board, to apportion its
27 income in accordance with this section, and not in accordance with
28 Section 25128, if the “tax,” as defined in Section 23036 before the
29 application of any credits, using this section to apportion its
30 business income, is not less than the “tax,” as defined in Section
31 23036 before the application of any credits, using subdivision (a)
32 of Section 25128 to apportion its business income.

33 (b) Notwithstanding Section 38006, for taxable years beginning
34 on or after January 1, 2011, all business income of an apportioning
35 trade or business making an election under subdivision (a) shall
36 be apportioned to this state by multiplying the business income
37 by a fraction, the numerator of which is the property factor plus
38 the payroll factor plus twice the sales factor, and the denominator
39 of which is four.

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

5 SEC. 12. Section 25136 of the Revenue and Taxation Code is
6 amended to read:

7 25136. (a) For taxable years beginning on or after January 1,
8 2011:

9 (1) Sales from services are in this state to the extent the
10 purchaser of the service received the benefit of the service in this
11 state.

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

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

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

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

22 SEC. 13. Section 25136.1 is added to the Revenue and Taxation
23 Code, to read:

24 25136.1. (a) For taxable years beginning on or after January
25 1, 2011, a qualified taxpayer that apportions its business income
26 under Section 25128 shall apply the following provisions:

27 (1) Notwithstanding Section 25137, qualified sales assigned to
28 this state shall be equal to 50 percent of the amount of qualified
29 sales that would be assigned to this state pursuant to Section 25136
30 but for the application of this section. The remaining 50 percent
31 shall not be assigned to this state.

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

33 (b) For purposes of this section:

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

39 (2) "Qualified group" means a combined reporting group, as
40 defined in paragraph (3) of subdivision (b) of Section 25106.5 of

1 Title 18 of the California Code of Regulations, as in effect on the
2 effective date of the act adding this section, that satisfies the
3 following conditions:

4 (A) Has satisfied the minimum investment requirement for the
5 taxable year.

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

10 (C) For purposes of satisfying the requirements of subparagraph
11 (B), the following rules shall apply:

12 (i) If a member of the combined reporting group for the taxable
13 year was not a member of the same combined reporting group for
14 the taxable year beginning in calendar year 2006, the gross business
15 receipts of that nonincluded member shall be included in
16 determining the combined reporting group's gross business receipts
17 for its taxable year beginning in calendar year 2006 as if the
18 nonincluded member were a member of the combined reporting
19 group for the taxable year beginning in calendar year 2006.

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

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

27 (4) "Gross business receipts" means gross receipts defined in
28 paragraph (2) of subdivision (f) of Section 25120 (other than gross
29 receipts from sales or other transactions between or among
30 members of a combined reporting group, limited, if applicable, by
31 Section 25110).

32 (5) "Minimum investment requirement" means qualified
33 expenditures of not less than two hundred fifty million dollars
34 (\$250,000,000) by a combined reporting group during the calendar
35 year that includes the beginning of the taxable year.

36 (6) "Qualified expenditures" means any combination of
37 expenditures attributable to this state for tangible property, payroll,
38 services, franchise fees, or any intangible property distribution or
39 other rights, paid or incurred by or on behalf of a member of a
40 combined reporting group.

1 (A) An expenditure for other than tangible property shall be
2 attributable to this state if the member of the combined reporting
3 group received the benefit of the purchase or expenditure in this
4 state.

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

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

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

14 (7) "Qualified partnership" means a partnership if the
15 partnership's income and apportionment factors are included in
16 the income and apportionment factors of a member of the combined
17 reporting group, but only to the extent of the member's interest in
18 the partnership.

19 (8) "Qualified sales" means gross business receipts from the
20 provision of any network services, other than gross business
21 receipts from the sale or rental of customer premises equipment.
22 "Qualified sales" shall include qualified sales by a qualified
23 partnership, but only to the extent of a member's interest in the
24 partnership.

25 (c) The rules in this section with respect to qualified sales by a
26 qualified partnership are intended to be consistent with the rules
27 for partnerships under paragraph (3) of subdivision (f) of Section
28 25137-1 of Title 18 of the California Code of Regulations.

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

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

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