

AMENDED IN SENATE AUGUST 29, 2011

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 *Senators De León and Steinberg*
(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~~ *Sections 6377 and 25136.1* to, ~~to add and repeal 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 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 \$500,000,000 for each calendar year.~~

~~(2)~~

~~(1) 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)~~

~~(2) 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, 2015, whichever occurs first.

(4)

(3) 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 remain in effect until July 1, 2016.~~

On and after January 1, 2012, this bill would provide partial exemptions equal to specified percentages of state sales and use taxes imposed at a combined rate of 5% for 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.

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 existing law~~ authorizes districts, as specified, to impose transactions and use taxes in conformity with *accordance with the Transactions and Use Tax Law, which conforms to 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; *and* transactions and use taxes; ~~specified state sales and use taxes, and portions of other specified state sales and use taxes, as provided.~~

~~(5)~~

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

Vote: $\frac{2}{3}$. Appropriation: ~~yes-no~~. 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.~~

1 ~~(2) The exemption described in paragraph (1) shall not apply~~
2 ~~to the gross receipts from the sale of, or the storage, use, or other~~
3 ~~consumption of tangible personal property that is used primarily~~
4 ~~in administration, general management, or marketing.~~

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

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

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

11 ~~(3) “Manufacturing” means the activity of converting or~~
12 ~~conditioning tangible personal property by changing the form,~~
13 ~~composition, quality, or character of the property for ultimate sale~~
14 ~~at retail or use in the manufacturing of a product to be ultimately~~
15 ~~sold at retail. Manufacturing includes any improvements to tangible~~
16 ~~personal property that result in a greater service life or greater~~
17 ~~functionality than that of the original property.~~

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

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

37 ~~(6) “Processing” means the physical application of the materials~~
38 ~~and labor necessary to modify or change the characteristics of~~
39 ~~tangible personal property.~~

1 ~~(7) “Qualified person” means a person that is either of the~~
2 ~~following:~~

3 ~~(A) A new trade or business that is primarily engaged in those~~
4 ~~lines of business classified in Industry Groups 3111 to 3399,~~
5 ~~inclusive, of the North American Industry Classification System~~
6 ~~(NAICS) published by the United States Office of Management~~
7 ~~and Budget (OMB), 2007 edition. In determining whether a trade~~
8 ~~or business activity qualifies as a new trade or business, the~~
9 ~~following rules shall apply:~~

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

23 ~~(I) The determination of the relative fair market values of the~~
24 ~~acquired assets and the total assets shall be made as of the last day~~
25 ~~of the month following the quarterly period in which the person,~~
26 ~~or any related person, first uses any of the acquired trade or~~
27 ~~business assets in his or her business activity.~~

28 ~~(II) Any acquired assets that constituted property described in~~
29 ~~Section 1221(a) of the Internal Revenue Code in the hands of the~~
30 ~~transferor shall not be treated as assets acquired from an existing~~
31 ~~trade or business, unless those assets also constitute property~~
32 ~~described in Section 1221(a) of the Internal Revenue Code in the~~
33 ~~hands of the acquiring person or related person.~~

34 ~~(ii) In any case where a person, or any related person, is engaged~~
35 ~~in one or more trade or business activities in this state, or has been~~
36 ~~engaged in one or more trade or business activities in this state~~
37 ~~within the preceding 36 months, “prior trade or business activity,”~~
38 ~~and thereafter commences an additional trade or business activity~~
39 ~~in this state, the additional trade or business activity shall be treated~~
40 ~~as a new business only if the additional trade or business activity~~

1 is classified under a different Industry Group (4 digit) of the
2 NAICS published by the United States OMB, 2007 edition, than
3 are any of the person's or any related person's current or prior
4 trade or business activities in this state.

5 (iii) In any case where a person, including all related persons,
6 is engaged in trade or business activities wholly outside of this
7 state and that person first commences doing business in this state
8 (within the meaning of Chapter 2 (commencing with Section
9 23101) of Part 11) on or after June 30, 2012, other than by purchase
10 or other acquisition described in clause (i), the trade or business
11 activity shall be treated as a new business.

12 (iv) In any case where the legal form under which a trade or
13 business activity is being conducted is changed, the change in form
14 shall be disregarded and the determination of whether the trade or
15 business activity is a new business shall be made by treating the
16 person as having purchased or otherwise acquired all or any portion
17 of the assets of an existing trade or business under the rules of
18 clause (i).

19 (v) A "qualified person" shall not be regarded as a new trade
20 or business when the person has conducted business activities in
21 a new trade or business for three or more years.

22 (B) A trade or business, other than a new trade or business as
23 described in subparagraph (A), that is primarily engaged in those
24 lines of business classified in Industry Groups 3111 to 3399,
25 inclusive, of the NAICS published by the United States OMB,
26 2007 edition.

27 (8) Notwithstanding paragraph (7), "qualified person," for
28 purposes of this section, does not include an apportioning trade or
29 business described in subdivision (b) of Section 25128.

30 (9) "Refining" means the process of converting a natural
31 resource to an intermediate or finished product.

32 (10) "Related person" means any person that is related to another
33 person under either Section 267 or 318 of the Internal Revenue
34 Code.

35 (11) "Research and development" means those activities that
36 are described in Section 174 of the Internal Revenue Code or in
37 any regulations thereunder.

38 (12) "Tangible personal property" includes, but is not limited
39 to, all of the following:

1 ~~(A) Machinery and equipment, including component parts and~~
2 ~~contrivances such as belts, shafts, moving parts, and operating~~
3 ~~structures.~~

4 ~~(B) All equipment or devices used or required to operate,~~
5 ~~control, regulate, or maintain the machinery, including, without~~
6 ~~limitation, computers, data-processing equipment, and computer~~
7 ~~software, together with all repair and replacement parts with a~~
8 ~~useful life of one or more years therefor, whether purchased~~
9 ~~separately or in conjunction with a complete machine and~~
10 ~~regardless of whether the machine or component parts are~~
11 ~~assembled by the qualified person or another party.~~

12 ~~(C) Property used in pollution control that meets or exceeds~~
13 ~~standards established by this state or any local or regional~~
14 ~~governmental agency within this state.~~

15 ~~(D) Special purpose buildings and foundations used as an~~
16 ~~integral part of the manufacturing, processing, refining, or~~
17 ~~fabricating process, or that constitute a research or storage facility~~
18 ~~used during the manufacturing process. Buildings used solely for~~
19 ~~warehousing purposes after completion of the manufacturing~~
20 ~~process are not included.~~

21 ~~(E) Property used in recycling.~~

22 ~~(13) “Tangible personal property” does not include any of the~~
23 ~~following:~~

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

25 ~~(B) Furniture, inventory, equipment used in the extraction~~
26 ~~process, or equipment used to store finished products that have~~
27 ~~completed the manufacturing process.~~

28 ~~(14) “Useful life” for tangible personal property that a qualified~~
29 ~~person treats as having a useful life of one or more years for state~~
30 ~~income or franchise tax purposes shall be deemed to have a useful~~
31 ~~life of one or more years for purposes of this section. Useful life~~
32 ~~for tangible personal property that a qualified person treats as~~
33 ~~having a useful life of less than one year for state income or~~
34 ~~franchise tax purposes shall be deemed to have a useful life of less~~
35 ~~than one year for purposes of this section.~~

36 ~~(e) An exemption shall not be allowed under this section unless~~
37 ~~the purchaser furnishes the retailer with an exemption certificate,~~
38 ~~completed in accordance with any instructions or regulations as~~
39 ~~the board may prescribe, and the retailer retains a copy of the~~
40 ~~exemption certificate in his or her records. The exemption~~

1 certificate shall contain the sales price of the tangible personal
2 property that is exempt pursuant to subdivision (a), and shall be
3 furnished to the board upon request.

4 (d) (1) Notwithstanding subdivision (a), the exemption
5 established by this section shall not apply with respect to any tax
6 levied pursuant to Sections 6051.2, 6051.5, 6051.8, 6201.2, 6201.5,
7 and 6201.8, or pursuant to Article XIII of the California
8 Constitution.

9 (2) Notwithstanding any other law, the exemption established
10 by this section shall not apply to any tax levied by a county, city,
11 or district pursuant to, or in accordance with, the Bradley-Burns
12 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
13 with Section 7200)) or the Transactions and Use Tax Law (Part
14 1.6 (commencing with Section 7251)).

15 (e) Notwithstanding subdivision (a), for a qualified person that
16 is described in subparagraph (B) of paragraph (7) of subdivision
17 (b), and for a contractor performing a construction contract as
18 described in subparagraph (D) of paragraph (1) of subdivision (a)
19 for a qualified person as described in subparagraph (B) of
20 paragraph (7) of subdivision (b), the exemption established by this
21 section shall be limited to 20 percent of the amount that would
22 otherwise be allowed as an exemption under this section.

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

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

1 ~~(h) At the time necessary information technologies and~~
2 ~~electronic data warehousing capabilities of the board are~~
3 ~~sufficiently established, the board shall determine an efficient~~
4 ~~means by which qualified persons may electronically apply for,~~
5 ~~and receive, an exemption certificate that contains information~~
6 ~~that would assist retailers in complying with this part with respect~~
7 ~~to the exemption described by this section.~~

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

10 SECTION 1. Section 6377 is added to the Revenue and
11 Taxation Code, to read:

12 6377. (a) (1) Except as provided in subdivision (e), on and
13 after January 1, 2012, there are exempted from 78³/₄ percent of
14 the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 the
15 gross receipts from the sale of, and the storage, use, or other
16 consumption in this state of, any of the following:

17 (A) Tangible personal property purchased for use by a qualified
18 person to be used primarily in any stage of the manufacturing,
19 processing, refining, fabricating, or recycling of tangible personal
20 property, beginning at the point any raw materials are received
21 by the qualified person and introduced into the process and ending
22 at the point at which the manufacturing, processing, refining,
23 fabricating, or recycling has altered the property to its completed
24 form, including packaging, if required.

25 (B) Tangible personal property purchased for use by a qualified
26 person to be used primarily in research and development.

27 (C) Tangible personal property purchased for use by a qualified
28 person to be used primarily to maintain, repair, measure, or test
29 any property described in subparagraph (A) or (B).

30 (D) Tangible personal property purchased by a contractor for
31 use in the performance of a construction contract for a qualified
32 person that will use the tangible personal property as an integral
33 part of the manufacturing, processing, refining, fabricating, or
34 recycling process, or as a research or storage facility for use in
35 connection with the manufacturing process.

36 (2) The exemption established by this section shall not apply to
37 the gross receipts from the sale of, or the storage, use, or other
38 consumption of any of the following:

39 (A) Tangible personal property that is used primarily in
40 administration, general management, or marketing.

- 1 (B) *Consumables with a useful life of less than one year.*
2 (C) *Furniture, inventory, equipment used in the extraction*
3 *process, or equipment used to store finished products that have*
4 *completed the manufacturing process.*
5 (b) *For purposes of this section:*
6 (1) *“Acquire” includes any gift, inheritance, transfer incident*
7 *to divorce, or any other transfer, whether or not for consideration.*
8 (2) *“Fabricating” means to make, build, create, produce, or*
9 *assemble components or property to work in a new or different*
10 *manner.*
11 (3) *“Manufacturing” means the activity of converting or*
12 *conditioning tangible personal property by changing the form,*
13 *composition, quality, or character of the property for ultimate sale*
14 *at retail or use in the manufacturing of a product to be ultimately*
15 *sold at retail. Manufacturing includes any improvements to*
16 *tangible personal property that result in a greater service life or*
17 *greater functionality than that of the original property.*
18 *Manufacturing includes the generation of electricity.*
19 (4) *“Primarily,” for the purposes of subdivision (a), means*
20 *tangible personal property used 50 percent or more of the time in*
21 *an activity described in subdivision (a).*
22 (5) *“Process” means the period beginning at the point at which*
23 *any raw materials are received by the qualified person and*
24 *introduced into the manufacturing, processing, refining,*
25 *fabricating, or recycling activity of the qualified person and ending*
26 *at the point at which the manufacturing, processing, refining,*
27 *fabricating, or recycling activity of the qualified person has altered*
28 *tangible personal property to its completed form, including*
29 *packaging, if required. Raw materials shall be considered to have*
30 *been introduced into the process when the raw materials are stored*
31 *on the same premises where the qualified person’s manufacturing,*
32 *processing, refining, fabricating, or recycling activity is conducted.*
33 *Raw materials that are stored on premises other than where the*
34 *qualified person’s manufacturing, processing, refining, fabricating,*
35 *or recycling activity is conducted, shall not be considered to have*
36 *been introduced into the manufacturing, processing, refining,*
37 *fabricating, or recycling process.*
38 (6) *“Processing” means the physical application of the materials*
39 *and labor necessary to modify or change the characteristics of*
40 *property.*

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

3 (A) A new trade or business that is primarily engaged in those
4 lines of business classified in Industry Groups 3111 to 3399,
5 inclusive, Industry Group 5112, NAICS Industry 221119, or NAICS
6 Industry 541711 of the North American Industry Classification
7 System (NAICS) published by the United States Office of
8 Management and Budget (OMB), 2007 edition. In determining
9 whether a trade or business activity qualifies as a new trade or
10 business, the following rules shall apply:

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

24 (I) The determination of the relative fair market values of the
25 acquired assets and the total assets shall be made as of the last
26 day of the month following the quarterly period in which the person
27 (or any related person) first uses any of the acquired trade or
28 business assets in his or her business activity.

29 (II) Any acquired assets that constituted property described in
30 Section 1221(a) of the Internal Revenue Code in the hands of the
31 transferor shall not be treated as assets acquired from an existing
32 trade or business, unless those assets also constitute property
33 described in Section 1221(a) of the Internal Revenue Code in the
34 hands of the acquiring person (or related person).

35 (ii) In any case where a person (or any related person) is
36 engaged in one or more trade or business activities in this state,
37 or has been engaged in one or more trade or business activities
38 in this state within the preceding 36 months (prior trade or business
39 activity), and thereafter commences an additional trade or business
40 activity in this state, the additional trade or business activity shall

1 *only be treated as a new business if the additional trade or business*
2 *activity is classified under a different Industry Group (4-digit) of*
3 *the NAICS published by the United States OMB, 2007 edition, than*
4 *are any of the person's (or any related person's) current or prior*
5 *trade or business activities in this state.*

6 *(iii) In any case where a person, including all related persons,*
7 *is engaged in trade or business activities wholly outside of this*
8 *state and that person first commences doing business in this state*
9 *(within the meaning of Chapter 2 (commencing with Section 23101)*
10 *of Part 11) on or after January 1, 2012, (other than by purchase*
11 *or other acquisition described in clause (i)), the trade or business*
12 *activity shall be treated as a new business.*

13 *(iv) In any case where the legal form under which a trade or*
14 *business activity is being conducted is changed, the change in form*
15 *shall be disregarded and the determination of whether the trade*
16 *or business activity is a new business shall be made by treating*
17 *the person as having purchased or otherwise acquired all or any*
18 *portion of the assets of an existing trade or business under the*
19 *rules of clause (i).*

20 *(B) A trade or business, other than a new trade or business*
21 *described in subparagraph (A), that is primarily engaged in those*
22 *lines of business classified in Industry Groups 3111 to 3399,*
23 *inclusive, Industry Group 5112, NAICS Industry 221119, or NAICS*
24 *Industry 541711 of the NAICS published by the United States OMB,*
25 *2007 edition.*

26 *(8) "Qualified person" shall not include a person that is a*
27 *member of a combined reporting group that is required to*
28 *apportion its income pursuant to subdivision (b) of Section 25128*
29 *as that section read on January 1, 2011. For purposes of this*
30 *paragraph, a person is a member of a combined reporting group*
31 *if its tax liability or net income for purposes of Part 11*
32 *(commencing with Section 23001) is determined by a combined*
33 *report pursuant to Section 25101 or 25110, or is an entity included*
34 *in the combined report. For purposes of the preceding sentence,*
35 *"member" has the same meaning as that term is defined in*
36 *paragraph (10) of subdivision (b) of Section 25106.5 of Title 18*
37 *of the California Code of Regulations as that paragraph read on*
38 *January 1, 2011, and "combined reporting group" has the same*
39 *meaning as that term is defined in paragraph (3) of subdivision*

1 *(b) of Section 25106.5 of Title 18 of the California Code of*
2 *Regulations as that paragraph read on January 1, 2011.*

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

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

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

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

13 *(A) Machinery and equipment, including component parts and*
14 *contrivances such as belts, shafts, moving parts, and operating*
15 *structures.*

16 *(B) All equipment or devices used or required to operate,*
17 *control, regulate, or maintain the machinery, including, without*
18 *limitation, computers, data processing equipment, and computer*
19 *software, together with all repair and replacement parts with a*
20 *useful life of one or more years therefor, whether purchased*
21 *separately or in conjunction with a complete machine and*
22 *regardless of whether the machine or component parts are*
23 *assembled by the taxpayer or another party.*

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

27 *(D) Special purpose buildings and foundations used as an*
28 *integral part of the manufacturing, processing, refining, or*
29 *fabricating process, or that constitute a research or storage facility*
30 *used during the manufacturing process. Buildings used solely for*
31 *warehousing purposes after completion of the manufacturing*
32 *process are not included.*

33 *(E) Property used in recycling.*

34 *(13) “Useful life” for tangible personal property that a qualified*
35 *person treats as having a useful life of one or more years for state*
36 *income or franchise tax purposes shall be deemed to have a useful*
37 *life of one or more years for purposes of this section. Useful life*
38 *for tangible personal property that a qualified person treats as*
39 *having a useful life of less than one year for state income or*

1 *franchise tax purposes shall be deemed to have a useful life of less*
2 *than one year for purposes of this section.*

3 *(c) An exemption shall not be allowed under this section unless*
4 *the purchaser furnishes the retailer with an exemption certificate,*
5 *completed in accordance with any instructions or regulations as*
6 *the board may prescribe, and the retailer subsequently furnishes*
7 *the board with a copy of the exemption certificate. The exemption*
8 *certificate shall contain the sales price of the tangible personal*
9 *property, the sale of, or the storage, use, or other consumption of*
10 *which is exempt pursuant to subdivision (a) and shall be furnished*
11 *to the board upon request.*

12 *(d) Notwithstanding subdivision (a), the exemption established*
13 *by this section shall not apply with respect to any tax levied by a*
14 *county, city, or district pursuant to, or in accordance with, the*
15 *Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5*
16 *(commencing with Section 4200)) or the Transactions and Use*
17 *Tax Law (Part 1.6 (commencing with Section 7251)).*

18 *(e) Notwithstanding subdivision (a), on and after January 1,*
19 *2012, for a qualified person described in subparagraph (B) of*
20 *paragraph (7) of subdivision (b), or for a contractor performing*
21 *a construction contract as described in subparagraph (D) of*
22 *paragraph (1) of subdivision (a), the exemption established by this*
23 *section shall apply only with respect to 60 percent of the tax levied*
24 *by Sections 6051, 6051.3, 6201, and 6201.3.*

25 *(f) Notwithstanding subdivision (a), the exemption provided by*
26 *this section shall not apply to any sale or use of property which,*
27 *within one year from the date of purchase, is either removed from*
28 *California or converted from an exempt use under subdivision (a)*
29 *to some other use not qualifying for the exemption.*

30 *(g) If a purchaser certifies in writing to the seller that the*
31 *property purchased without payment of the tax will be used in a*
32 *manner entitling the seller to regard the gross receipts from the*
33 *sale as exempt from the sales tax pursuant to this section, and*
34 *within one year from the date of purchase, the purchaser (1)*
35 *removes that property outside California, (2) converts that property*
36 *for use in a manner not qualifying for the exemption, or (3) uses*
37 *that property in a manner not qualifying for the exemption, the*
38 *purchaser shall be liable for payment of sales tax, with applicable*
39 *interest, as if the purchaser were a retailer making a retail sale*
40 *of the property at the time the property is so removed, converted,*

1 or used, and the sales price of the property to the purchaser shall
 2 be deemed the gross receipts from that retail sale.

3 (h) The exemption established by this section shall apply to a
 4 lease of tangible personal property classified as a “continuing
 5 sale” or “continuing purchase” in accordance with Section 6006.1
 6 or 6010.1, and to the rentals payable pursuant to such a lease,
 7 provided the lessee is a qualified person and the tangible personal
 8 property is used in an activity described in subdivision (a).

9 (i) At the time necessary information technologies and electronic
 10 data warehousing capabilities of the board are sufficiently
 11 established, the board shall determine an efficient means by which
 12 qualified persons may electronically apply for, and receive, an
 13 exemption certificate that contains information that would assist
 14 retailers in complying with this part with respect to the exemption
 15 established by this section.

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

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

22 17053.80. (a) There shall be allowed a credit against the “net
 23 tax,” as defined in Section 17039, for each net increase in qualified
 24 full-time employees, as specified in subdivision (c), hired during
 25 the taxable year by a qualified employer, as follows:

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

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

32 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (i) In the case of a full-time employee paid hourly qualified
36 wages, “annual full-time equivalent” means the total number of
37 hours worked for the taxpayer by the employee (not to exceed
38 2,000 hours per employee) divided by 2,000.

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

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

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

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

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

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

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

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

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

34 (f) For purposes of this section:

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

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

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

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

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

9 (i) The last day of the calendar quarter within which the
10 Franchise Tax Board estimates it will have received timely filed
11 original returns claiming credits under this section and Section
12 23623 that cumulatively total four hundred million dollars
13 (\$400,000,000) for all taxable years.

14 (ii) December 31, 2015.

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

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 error
24 appearing on the return. Any amount of tax resulting from such
25 disallowance may be assessed by the Franchise Tax Board in the
26 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 23623 claimed on timely filed original
30 returns received by the Franchise Tax Board.

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

39 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
40 Division 3 of Title 2 of the Government Code does not apply to

1 any standard, criterion, procedure, determination, rule, notice, or
2 guideline established or issued by the Franchise Tax Board
3 pursuant to this section.

4 (i) This section shall remain in effect only until December 1,
5 2016, and as of that date is repealed.

6 ~~SEC. 4. Section 17053.86 is added to the Revenue and Taxation
7 Code, to read:~~

8 ~~17053.86. (a) (1) For each taxable year beginning on or after
9 January 1, 2012, and before January 1, 2017, there shall be allowed
10 a credit against the "net tax," as defined in Section 17039, an
11 amount equal to 75 percent of the amount contributed during the
12 taxable year by a taxpayer to the Higher Education Investment
13 Tax Credit Program Special Fund.~~

14 ~~(2) Contributions shall be made only in cash.~~

15 ~~(b) (1) The aggregate amount of credit that may be allocated
16 pursuant to this section and Section 23686 shall not exceed five
17 hundred million dollars (\$500,000,000) for the 2012 calendar year
18 and five hundred million dollars (\$500,000,000) for each calendar
19 year thereafter.~~

20 ~~(2) (A) Credit under this section and Section 23686 shall be
21 allowed only for credits claimed on timely filed original returns
22 received by the Franchise Tax Board on or before the cut-off date
23 established by the Franchise Tax Board and shall be allocated on
24 a first-come-first-served basis. The date a return is received shall
25 be determined by the Franchise Tax Board.~~

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

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

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

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

5 ~~(e) (1) In the case where the credit allowed by this section~~
6 ~~exceeds the “net tax,” the excess may be carried over to reduce~~
7 ~~the “net tax” in the following year, and succeeding five years if~~
8 ~~necessary, until the credit is exhausted.~~

9 ~~(2) A deduction shall not be allowed under this part for amounts~~
10 ~~taken into account under this section in calculating the credit~~
11 ~~allowed by this section.~~

12 ~~(d) (1) The Higher Education Investment Tax Credit Program~~
13 ~~Special Fund is hereby created as a special fund in the State~~
14 ~~Treasury managed by the State Treasurer consisting of funds~~
15 ~~contributed by taxpayers. All revenue in this special fund, upon~~
16 ~~appropriation by the Legislature, shall be allocated by the State~~
17 ~~Controller in equal parts to the Regents of the University of~~
18 ~~California, the Trustees of the California State University, and the~~
19 ~~Board of Governors of the California Community Colleges.~~

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

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

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 ~~(f) This section shall remain in effect only until December 1,~~
7 ~~2017, and as of that date is repealed.~~

8 ~~SEC. 5.~~

9 *SEC. 4.* Section 23101 of the Revenue and Taxation Code is
10 amended to read:

11 23101. (a) “Doing business” means actively engaging in any
12 transaction for the purpose of financial or pecuniary gain or profit.

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

16 (1) The taxpayer is organized or commercially domiciled in this
17 state.

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

27 (3) The real property and tangible personal property of the
28 taxpayer in this state exceed the lesser of fifty thousand dollars
29 (\$50,000) or 25 percent of the taxpayer’s total real property and
30 tangible personal property. The value of real and tangible personal
31 property and the determination of whether property is in this state
32 shall be determined using the rules contained in Sections 25129
33 to 25131, inclusive, and the regulations thereunder, as modified
34 by regulation under Section 25137.

35 (4) The amount paid in this state by the taxpayer for
36 compensation, as defined in subdivision (c) of Section 25120,
37 exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent
38 of the total compensation paid by the taxpayer. Compensation in
39 this state shall be determined using the rules for assigning payroll

1 contained in Section 25133 and the regulations thereunder, as
2 modified by regulations under Section 25137.

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

6 (2) For purposes of the adjustment required by paragraph (1),
7 subdivision (h) of Section 17041 shall be applied by substituting
8 “2012” in lieu of “1988.”

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

13 ~~SEC. 6.~~

14 *SEC. 5.* Section 23623 of the Revenue and Taxation Code, as
15 added by Section 8 of Chapter 10 of the Third Extraordinary
16 Session of the Statutes of 2009, is repealed.

17 ~~SEC. 7.~~

18 *SEC. 6.* Section 23623 of the Revenue and Taxation Code, as
19 added by Section 8 of Chapter 17 of the Third Extraordinary
20 Session of the Statutes of 2009, is amended to read:

21 23623. (a) There shall be allowed a credit against the “tax,”
22 as defined in Section 23036, for each net increase in qualified
23 full-time employees, as specified in subdivision (c), hired during
24 the taxable year by a qualified employer as follows:

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

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

31 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (i) In the case of a full-time employee paid hourly qualified
36 wages, “annual full-time equivalent” means the total number of
37 hours worked for the taxpayer by the employee (not to exceed
38 2,000 hours per employee) divided by 2,000.

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

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

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

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

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

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

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

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

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

34 (f) For purposes of this section:

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

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

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

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

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

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

14 (ii) December 31, 2015.

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

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 error
24 appearing on the return. Any amount of tax resulting from such
25 disallowance may be assessed by the Franchise Tax Board in the
26 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 17053.80 claimed on timely filed original
30 returns received by the Franchise Tax Board.

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

39 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
40 Division 3 of Title 2 of the Government Code does not apply to

1 any standard, criterion, procedure, determination, rule, notice, or
2 guideline established or issued by the Franchise Tax Board
3 pursuant to this section.

4 (i) This section shall remain in effect only until December 1,
5 2016, and as of that date is repealed.

6 ~~SEC. 8.— Section 23686 is added to the Revenue and Taxation~~
7 ~~Code, to read:~~

8 ~~23686. (a) (1) For each taxable year beginning on or after~~
9 ~~January 1, 2012, and before January 1, 2017, there shall be allowed~~
10 ~~a credit against the “tax,” as defined in Section 23036, an amount~~
11 ~~equal to 75 percent of the amount contributed during the taxable~~
12 ~~year by a taxpayer to the Higher Education Investment Tax Credit~~
13 ~~Program Special Fund, created by subdivision (d) of Section~~
14 ~~17053.86.~~

15 ~~(2) Contributions shall be made only in cash.~~

16 ~~(b) (1) The aggregate amount of credit that may be allocated~~
17 ~~pursuant to this section and Section 17053.86 shall not exceed five~~
18 ~~hundred million dollars (\$500,000,000) for the 2012 calendar year~~
19 ~~and five hundred million dollars (\$500,000,000) for each calendar~~
20 ~~year thereafter.~~

21 ~~(2) (A) Credit under this section and Section 17053.86 shall be~~
22 ~~allowed only for credits claimed on timely filed original returns~~
23 ~~received by the Franchise Tax Board on or before the cut-off date~~
24 ~~established by the Franchise Tax Board and shall be allocated on~~
25 ~~a first-come-first-served basis. The date a return is received shall~~
26 ~~be determined by the Franchise Tax Board.~~

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

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

36 ~~(B) Any disallowance of a credit claimed due to a determination~~
37 ~~under this subdivision, including the application of the limitation~~
38 ~~specified in paragraph (1), shall be treated as a mathematical error~~
39 ~~appearing on the return. Any amount of tax resulting from such~~

1 disallowance may be assessed by the Franchise Tax Board in the
2 same manner as provided by Section 19051.

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

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

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

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

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

24 ~~(e) This section shall remain in effect only until December 1,~~
25 ~~2017, and as of that date is repealed.~~

26 ~~SEC. 9.~~

27 *SEC. 7.* 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 (c) of

1 Section 25128, may make a separate election for each apportioning
2 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. 10:~~

21 *SEC. 8.* Section 25128 of the Revenue and Taxation Code is
22 amended to read:

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

29 (2) 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 paragraph (1) shall be apportioned
32 to this state by multiplying the business income by the sales factor.

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

1 (c) For purposes of this section:

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

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

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

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

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

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

33 (A) An agricultural business activity.

34 (B) An extractive business activity.

35 (C) A savings and loan activity.

36 (D) A banking or financial business activity.

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

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

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

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

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

14 ~~SEC. 11.~~

15 *SEC. 9.* Section 25128.5 of the Revenue and Taxation Code
16 is amended to read:

17 25128.5. (a) Notwithstanding Section 38006, for taxable years
18 beginning on or after January 1, 2011, any apportioning trade or
19 business, other than an apportioning trade or business described
20 in subdivision (b) of Section 25128, may make an irrevocable
21 annual election on an original timely filed return, in the manner
22 and form prescribed by the Franchise Tax Board, to apportion its
23 income in accordance with this section, and not in accordance with
24 Section 25128, if the “tax,” as defined in Section 23036 before the
25 application of any credits, using this section to apportion its
26 business income, is not less than the “tax,” as defined in Section
27 23036 before the application of any credits, using subdivision (a)
28 of Section 25128 to apportion its business income.

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 making an election under subdivision (a) shall
32 be apportioned to this state by multiplying the business income
33 by a fraction, the numerator of which is the property factor plus
34 the payroll factor plus twice the sales factor, and the denominator
35 of which is four.

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

1 ~~SEC. 12.~~

2 *SEC. 10.* Section 25136 of the Revenue and Taxation Code is
3 amended to read:

4 25136. (a) For taxable years beginning on or after January 1,
5 2011:

6 (1) Sales from services are in this state to the extent the
7 purchaser of the service received the benefit of the service in this
8 state.

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

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

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

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

19 ~~SEC. 13.~~

20 *SEC. 11.* Section 25136.1 is added to the Revenue and
21 Taxation Code, to read:

22 25136.1. (a) For taxable years beginning on or after January
23 1, 2011, a qualified taxpayer that apportions its business income
24 under Section 25128 shall apply the following provisions:

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

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

31 (b) For purposes of this section:

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

37 (2) “Qualified group” means a combined reporting group, as
38 defined in paragraph (3) of subdivision (b) of Section 25106.5 of
39 Title 18 of the California Code of Regulations, as in effect on the

1 effective date of the act adding this section, that satisfies the
2 following conditions:

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

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

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

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

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

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

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

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

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

30 *SEC. 12.* This act is an urgency statute necessary for the
31 immediate preservation of the public peace, health, or safety within
32 the meaning of Article IV of the Constitution and shall go into
33 immediate effect. The facts constituting the necessity are:

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

O