

AMENDED IN SENATE MARCH 15, 2011

SENATE BILL

No. 156

Introduced by Senator Emmerson

(Principal ~~coauthor: Assembly Member Cook~~ *coauthors: Assembly Members Cook and Silva*)

(Coauthor: Senator Cannella)

(*Coauthors: Assembly Members Gorell, Harkey, Jeffries, Nestande, and Wagner*)

February 2, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 156, as amended, Emmerson. Income tax: credits: full-time employees: hires.

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

This bill would, under both laws, for taxable years beginning on or after January 1, 2012, expand the definition of "qualified employer" to mean a taxpayer that employed 50 or fewer employees as of the last day of the preceding taxable year.

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

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

This bill would take effect immediately as a tax levy.

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

State-mandated local program: no.

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

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3 Extraordinary Session of the Statutes of 2009, is repealed.

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

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

13 (b) For purposes of this section:

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

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

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

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

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

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

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

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

4 (D) An employee certified as a qualified disadvantaged
5 individual or a qualified displaced employee in a local agency
6 military base recovery area (LAMBRA) designated in accordance
7 with Chapter 12.97 (commencing with Section 7105) of Division
8 7 of Title 1 of the Government Code.

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

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

15 (B) For taxable years beginning on or after January 1, 2012,
16 “qualified employer” means a taxpayer that, as of the last day of
17 the preceding taxable year, employed a total of 50 or fewer
18 employees.

19 (5) “Qualified wages” means wages subject to Division 6
20 (commencing with Section 13000) of the Unemployment Insurance
21 Code.

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

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

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

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

33 (1) (A) The net increase in qualified full-time employees shall
34 be determined on an annual full-time equivalent basis by
35 subtracting from the amount determined in subparagraph (C) the
36 amount determined in subparagraph (B).

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

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

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

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

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

14 (f) For purposes of this section, all employees of the trades or
15 businesses that are treated as related under either Section 267, 318,
16 or 707 of the Internal Revenue Code shall be treated as employed
17 by a single taxpayer.

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

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

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

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

34 (B) Any disallowance of a credit claimed due to a determination
35 under this subdivision, including the application of the limitation
36 specified in paragraph (1), shall be treated as a mathematical error
37 appearing on the return. Any amount of tax resulting from such
38 disallowance may be assessed by the Franchise Tax Board in the
39 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 23623 claimed on timely filed original
4 returns received by the Franchise Tax Board.

5 (h) (1) The Franchise Tax Board may prescribe rules,
6 guidelines, or procedures necessary or appropriate to carry out the
7 purposes of this section, including any guidelines regarding the
8 limitation on total credits allowable under this section and Section
9 23623 and guidelines necessary to avoid split-ups, shell
10 corporations, partnerships, tiered ownership structures, or
11 otherwise.

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

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

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

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

26 23623. (a) For each taxable year beginning on or after January
27 1, 2009, there shall be allowed as a credit against the “tax,” as
28 defined in Section 23036, three thousand dollars (\$3,000) for each
29 net increase in qualified full-time employees, as specified in
30 subdivision (c), hired during the taxable year by a qualified
31 employer.

32 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

26 (B) For taxable years beginning on or after January 1, 2012,
27 “qualified employer” means a taxpayer that, as of the last day of
28 the preceding taxable year, employed a total of 50 or fewer
29 employees.

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

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

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

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

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

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

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

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

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

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

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

(f) For purposes of this section, all employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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