
Introduced by Senator Wyland

February 9, 2011

An act to repeal and amend Section 17053.80 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 228, as introduced, Wyland. Income tax: credit: small businesses.

The Personal Income Tax Law authorizes various credits against the taxes imposed by those laws, including a credit in an amount equal to \$3,000, prorated as provided, for each full-time employee hired during the taxable year by a qualified employer, as defined.

This bill would repeal a duplicative provision in the Personal Income Tax Law and make a technical, nonsubstantive change in the remaining provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION 1. Section 17053.80 of the Revenue and Taxation
- 2 Code, as added by Section 3 of Chapter 10 of the 3rd Extraordinary
- 3 Session of the Statutes of 2009, is repealed.
- 4 ~~17053.80. (a) For each taxable year beginning on or after~~
- 5 ~~January 1, 2009, there shall be allowed as a credit against the "net~~
- 6 ~~tax," as defined in Section 17039, three thousand dollars (\$3,000)~~
- 7 ~~for each net increase in qualified full-time employees, as specified~~
- 8 ~~in subdivision (c), hired during the taxable year by a qualified~~
- 9 ~~employer.~~
- 10 (b) ~~For purposes of this section:~~

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

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

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

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

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

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

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

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

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

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

30 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
31 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
32 ~~employees.~~

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

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

37 ~~(A) In the case of a full-time employee paid hourly qualified~~
38 ~~wages, “annual full-time equivalent” means the total number of~~
39 ~~hours worked for the taxpayer by the employee (not to exceed~~
40 ~~2,000 hours per employee) divided by 2,000.~~

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

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

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

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

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

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

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

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

27 ~~(f) For purposes of this section:~~

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

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

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

39 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~
40 ~~last day of the calendar quarter within which the Franchise Tax~~

1 Board estimates it will have received timely filed original returns
2 claiming credits under this section and Section 23623 that
3 cumulatively total four hundred million dollars (\$400,000,000)
4 for all taxable years.

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

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

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

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

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

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

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

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

39 17053.80. (a) For each taxable year beginning on or after
40 January 1, 2009, there shall be allowed as a credit against the “net

1 tax,” as defined in Section 17039, three thousand dollars (\$3,000)
2 for each net increase in qualified full-time employees, as specified
3 in subdivision (c), hired during the taxable year by a qualified
4 employer.

5 (b) For purposes of this section:

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

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

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

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

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

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

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

25 (C) An employee certified as a qualified employee in a targeted
26 tax area designated in accordance with Section 7097 of the
27 Government Code.

28 (D) An employee certified as a qualified disadvantaged
29 individual or a qualified displaced employee in a local agency
30 military base recovery area (LAMBRA) designated in accordance
31 with Chapter 12.97 (commencing with Section 7105) of Division
32 7 of Title 1 of the Government Code.

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

35 (4) “Qualified employer” means a taxpayer that, as of the last
36 day of the preceding taxable year, employed a total of 20 or fewer
37 employees.

38 (5) “Qualified wages” means wages subject to Division 6
39 (commencing with Section 13000) of the Unemployment Insurance
40 Code.

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

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

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

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

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

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

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

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

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

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

32 (f) For purposes of this section:

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

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

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

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

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12 Franchise Tax Board.

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

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

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

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

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

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

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