

AMENDED IN ASSEMBLY AUGUST 7, 2012

AMENDED IN ASSEMBLY JUNE 21, 2012

AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE APRIL 10, 2012

SENATE BILL

No. 1179

Introduced by Senator Walters

February 22, 2012

An act to add Section 19136.9 to, ~~and~~ to add and repeal Sections 17053.81 and 23625 of, *and to repeal and amend Sections 17053.80 and 23623 of*, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1179, as amended, Walters. Income taxes: credit: manufacturers.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit in an amount equal to \$3,000 for each full-time employee hired during the taxable year by a qualified employer, as defined. *Existing law limits the total amount of credit that may be allocated under those provisions to \$400,000,000.*

This bill would reduce the total amount of credit that may be allocated under those provisions to \$375,000,000.

This bill would allow a credit against the taxes imposed by the Personal Income Tax Law and the Corporation Tax Law in an amount equal to \$3,000 for each disabled veteran, as defined, hired as a qualified full-time employee during the taxable year by a qualified employer, as defined.

This bill would limit the total amount of credit that may be allocated under those provisions to \$25,000,000.

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: ~~majority~~ ^{$\frac{2}{3}$} . 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3 Extraordinary Session of the Statutes of 2009, is repealed.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 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:~~
11 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
12 ~~to divorce, or any other transfer, whether or not for consideration.~~
13 ~~(2) “Qualified full-time employee” means:~~
14 ~~(A) A qualified employee who was paid qualified wages by the~~
15 ~~qualified employer for services of not less than an average of 35~~
16 ~~hours per week.~~
17 ~~(B) A qualified employee who was a salaried employee and~~
18 ~~was paid compensation during the taxable year for full-time~~
19 ~~employment, within the meaning of Section 515 of the Labor Code,~~
20 ~~by the qualified employer.~~
21 ~~(3) A “qualified employee” shall not include any of the~~
22 ~~following:~~
23 ~~(A) An employee certified as a qualified employee in an~~
24 ~~enterprise zone designated in accordance with Chapter 12.8~~
25 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
26 ~~Government Code.~~

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

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

7 ~~(D) An employee certified as a qualified disadvantaged~~
8 ~~individual or a qualified displaced employee in a local agency~~
9 ~~military base recovery area (LAMBRA) designated in accordance~~
10 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
11 ~~7 of Title 1 of the Government Code.~~

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

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

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

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

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

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

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

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

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

38 ~~(C) The total number of full-time employees employed in the~~
39 ~~current taxable year by the taxpayer and by any trade or business~~
40 ~~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 “net tax,” the excess may be carried over to reduce the “net 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:~~

~~(1) 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 23623 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 23623 that cumulatively total four hundred million dollars (\$400,000,000) for all taxable years.~~

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

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

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

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

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

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

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

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

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

(b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (A) In the case of a full-time employee paid hourly qualified
28 wages, “annual full-time equivalent” means the total number of
29 hours worked for the taxpayer by the employee (not to exceed
30 2,000 hours per employee) divided by 2,000.

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

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

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

(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 “net tax,” the excess may be carried over to reduce the “net 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:

(1) 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~~ 17276.20, without application of paragraph (7) of that subdivision, shall apply.

(g) (1) (A) Credit under this section and Section 23623 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 23623 that cumulatively total ~~four~~ *three* hundred *seventy-five* million dollars ~~(\$400,000,000)~~ *(\$375,000,000)* for all taxable years.

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

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

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

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

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

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

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

SECTION 1.

SEC. 3. Section 17053.81 is added to the Revenue and Taxation Code, to read:

17053.81. (a) For each taxable year beginning on or after January 1, 2013, there shall be allowed as a credit against the “net tax,” as defined in Section 17039, three thousand dollars (\$3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.

(b) For purposes of this section:

(1) “Qualified full-time employee” means any of the following:

(A) An employee who is a disabled veteran, as defined in Section 999 of the Military and Veterans Code, who was paid

1 qualified wages during the taxable year by the qualified employer
2 for services of not less than an average of 35 hours per week.

3 (B) An employee who is a disabled veteran, as defined in Section
4 999 of the Military and Veterans Code, who was a salaried
5 employee and was paid compensation during the taxable year for
6 full-time employment, within the meaning of Section 515 of the
7 Labor Code, by the qualified employer.

8 (2) A “qualified full-time employee” shall not include any of
9 the following:

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

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

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

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

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

27 (3) “Qualified employer” means a taxpayer that is primarily
28 engaged in the lines of business classified in Code 339113 of the
29 North American Industry Classification System (NAICS) published
30 by the United States Office of Management and Budget (OMB),
31 2012 edition.

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

35 (5) “Annual full-time equivalent” means either of the following:

36 (A) In the case of a full-time employee paid hourly qualified
37 wages, “annual full-time equivalent” means the total number of
38 hours worked for the taxpayer by the employee (not to exceed
39 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 qualified full-time employees employed
15 in the current taxable year by the taxpayer and by any trade or
16 business 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 qualified full-time
19 employees for the immediately preceding prior taxable year shall
20 be zero.

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

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

28 (f) For purposes of this section:

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

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

36 (g) (1) (A) Credit under this section and Section 23625 shall
37 be allowed only for credits claimed on timely filed original returns
38 received by the Franchise Tax Board on or before the cutoff date
39 established by the Franchise Tax Board.

(B) For purposes of this paragraph, the cutoff 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 23625 that cumulatively total twenty-five million dollars (\$25,000,000) for all taxable years.

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

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

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

(4) The Franchise Tax Board shall periodically provide notice on its Internet Web site with respect to the amount of credit under this section and Section 23625 claimed on timely filed original returns received by the Franchise Tax Board.

(h) (1) The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the limitation on total credits allowable under this section and Section 23625 and guidelines necessary to avoid the application of paragraph (2) of subdivision (f) through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

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

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

~~SEC. 2.~~

SEC. 4. Section 19136.9 is added to the Revenue and Taxation Code, to read:

1 19136.9. (a) No addition to tax shall be made under Section
2 19136 with respect to any underpayment of an installment to the
3 extent that the underpayment was created or increased by the
4 disallowance of a credit under subdivision (g) of Section 17053.81.

5 (b) No addition to tax shall be made under Section 19142 with
6 respect to any underpayment of an installment to the extent that
7 the underpayment was created or increased by the disallowance
8 of a credit under subdivision (g) of Section 23625.

9 (c) The Franchise Tax Board shall adopt procedures, forms, and
10 instructions necessary to implement this section in a reasonable
11 manner.

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

15 ~~23623. (a) For each taxable year beginning on or after January~~
16 ~~1, 2009, there shall be allowed as a credit against the "tax," as~~
17 ~~defined in Section 23036, three thousand dollars (\$3,000) for each~~
18 ~~net increase in qualified full-time employees, as specified in~~
19 ~~subdivision (c), hired during the taxable year by a qualified~~
20 ~~employer.~~

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

22 ~~(1) "Acquired" includes any gift, inheritance, transfer incident~~
23 ~~to divorce, or any other transfer, whether or not for consideration.~~

24 ~~(2) "Qualified full-time employee" means:~~

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

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

32 ~~(3) A "qualified employee" shall not include any of the~~
33 ~~following:~~

34 ~~(A) An employee certified as a qualified employee in an~~
35 ~~enterprise zone designated in accordance with Chapter 12.8~~
36 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
37 ~~Government Code.~~

38 ~~(B) An employee certified as a qualified disadvantaged~~
39 ~~individual in a manufacturing enhancement area designated in~~
40 ~~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) “Qualified employer” means a taxpayer that, as of the last~~
12 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
13 ~~employees.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~
21 ~~last day of the calendar quarter within which the Franchise Tax~~
22 ~~Board estimates it will have received timely filed original returns~~
23 ~~claiming credits under this section and Section 17053.80 that~~
24 ~~cumulatively total four hundred million dollars (\$400,000,000)~~
25 ~~for all taxable years.~~

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

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

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

38 ~~(4) The Franchise Tax Board shall periodically provide notice~~
39 ~~on its Web site with respect to the amount of credit under this~~

1 ~~section and Section 17053.80 claimed on timely filed original~~
2 ~~returns received by the Franchise Tax Board.~~

3 ~~(h) (1) The Franchise Tax Board may prescribe rules, guidelines~~
4 ~~or procedures necessary or appropriate to carry out the purposes~~
5 ~~of this section, including any guidelines regarding the limitation~~
6 ~~on total credits allowable under this section and Section 17053.80~~
7 ~~and guidelines necessary to avoid the application of paragraph (2)~~
8 ~~of subdivision (f) through split-ups, shell corporations, partnerships,~~
9 ~~tiered ownership structures, or otherwise.~~

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

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

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) For each taxable year beginning on or after January
22 1, 2009, there shall be allowed as a credit against the “tax,” as
23 defined in Section 23036, three thousand dollars (\$3,000) for each
24 net increase in qualified full-time employees, as specified in
25 subdivision (c), hired during the taxable year by a qualified
26 employer.

27 (b) For purposes of this section:

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

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

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

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

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

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

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

8 (C) An employee certified as a qualified employee in a targeted
9 tax area designated in accordance with Section 7097 of the
10 Government Code.

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

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

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

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

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

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

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

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

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

(1) 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) (g) of Section—17276 24416.20, 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 cumulatively total ~~four~~ *three* hundred *seventy-five* million dollars ~~(\$400,000,000)~~ *(\$375,000,000)* for all taxable years.

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

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

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

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

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

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

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

~~SEC. 3.~~

SEC. 7. Section 23625 is added to the Revenue and Taxation Code, to read:

23625. (a) For each taxable year beginning on or after January 1, 2013, there shall be allowed as a credit against the "tax," as defined in Section 23036, three thousand dollars (\$3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.

(b) For purposes of this section:

(1) "Qualified full-time employee" means any of the following:

(A) An employee who is a disabled veteran, as defined in Section 999 of the Military and Veterans Code, who was paid

1 qualified wages during the taxable year by the qualified employer
2 for services of not less than an average of 35 hours per week.

3 (B) An employee who is a disabled veteran, as defined in Section
4 999 of the Military and Veterans Code, who was a salaried
5 employee and was paid compensation during the taxable year for
6 full-time employment, within the meaning of Section 515 of the
7 Labor Code, by the qualified employer.

8 (2) A “qualified full-time employee” shall not include any of
9 the following:

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

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

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

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

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

27 (3) “Qualified employer” means a taxpayer that is primarily
28 engaged in the lines of business classified in Code 339113 of the
29 North American Industry Classification System (NAICS) published
30 by the United States Office of Management and Budget (OMB),
31 2012 edition.

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

35 (5) “Annual full-time equivalent” means either of the following:

36 (A) In the case of a full-time employee paid hourly qualified
37 wages, “annual full-time equivalent” means the total number of
38 hours worked for the taxpayer by the employee (not to exceed
39 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 qualified full-time employees employed
15 in the current taxable year by the taxpayer and by any trade or
16 business 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 qualified full-time
19 employees for the immediately preceding prior taxable year shall
20 be zero.

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

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

28 (f) For purposes of this section:

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

32 (2) In determining whether the taxpayer has first commenced
33 doing business in this state during the taxable year, the provisions
34 of subdivision (g) of Section 24416.20, without application of
35 paragraph (7) of that subdivision, shall apply.

36 (g) (1) (A) Credit under this section and Section 17053.81 shall
37 be allowed only for credits claimed on timely filed original returns
38 received by the Franchise Tax Board on or before the cut-off date
39 established by the Franchise Tax Board.

1 (B) For purposes of this paragraph, the cut-off date shall be the
2 last day of the calendar quarter within which the Franchise Tax
3 Board estimates it will have received timely filed original returns
4 claiming credits under this section and Section 17053.81 that
5 cumulatively total twenty-five million dollars (\$25,000,000) for
6 all taxable years.

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

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

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

19 (4) The Franchise Tax Board shall periodically provide notice
20 on its Internet Web site with respect to the amount of credit under
21 this section and Section 17053.81 claimed on timely filed original
22 returns received by the Franchise Tax Board.

23 (h) (1) The Franchise Tax Board may prescribe rules,
24 guidelines, or procedures necessary or appropriate to carry out the
25 purposes of this section, including any guidelines regarding the
26 limitation on total credits allowable under this section and Section
27 17053.81 and guidelines necessary to avoid the application of
28 paragraph (2) of subdivision (f) through split-ups, shell
29 corporations, partnerships, tiered ownership structures, or
30 otherwise.

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

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

- 1 ~~SEC. 4.~~
- 2 *SEC. 8.* This act provides for a tax levy within the meaning of
- 3 Article IV of the Constitution and shall go into immediate effect.

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