

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 9

Introduced by Assembly Member Holden

December 3, 2012

An act relating to economic development to amend Sections 17053.74 and 23622.7 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 9, as amended, Holden. ~~State government: economic development.~~ *Income taxes: credits: enterprise zone.*

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including credits for taxpayers that employ qualified employees, as defined, in an enterprise zone.

This bill would modify the definition of a qualified employee, as specified, and require qualified wages to exceed an average monthly wage of \$2,000, as specified.

This bill would also make technical, nonsubstantive changes.

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.

~~Existing law provides for the establishment of various job training and economic development programs, administered by the Employment Development Department and other state agencies.~~

~~This bill would declare the intent of the Legislature to enact legislation that promotes job and business growth and encourages economic development.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: no.

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

1 *SECTION 1. Section 17053.74 of the Revenue and Taxation*
2 *Code is amended to read:*

3 17053.74. (a) There shall be allowed a credit against the “net
4 tax” (as defined in Section 17039) to a taxpayer who employs a
5 qualified employee in an enterprise zone during the taxable year.
6 The credit shall be equal to the sum of each of the following:

7 (1) Fifty percent of qualified wages in the first year of
8 employment.

9 (2) Forty percent of qualified wages in the second year of
10 employment.

11 (3) Thirty percent of qualified wages in the third year of
12 employment.

13 (4) Twenty percent of qualified wages in the fourth year of
14 employment.

15 (5) Ten percent of qualified wages in the fifth year of
16 employment.

17 (b) For purposes of this section:

18 (1) “Qualified wages” means:

19 (A) (i) Except as provided in clause (ii), that portion of wages
20 paid or incurred by the taxpayer during the taxable year to qualified
21 employees that does not exceed 150 percent of the minimum wage.

22 (ii) For up to 1,350 qualified employees who are employed by
23 the taxpayer in the Long Beach Enterprise Zone in aircraft
24 manufacturing activities described in Codes 3721 to 3728,
25 inclusive, and Code 3812 of the Standard Industrial Classification
26 (SIC) Manual published by the United States Office of
27 Management and Budget, 1987 edition, “qualified wages” means
28 that portion of hourly wages that does not exceed 202 percent of
29 the minimum wage.

30 (B) Wages received during the 60-month period beginning with
31 the first day the employee commences employment with the
32 taxpayer. Reemployment in connection with any increase, including

1 a regularly occurring seasonal increase, in the trade or business
2 operations of the taxpayer does not constitute commencement of
3 employment for purposes of this section.

4 (C) Qualified wages do not include any wages paid or incurred
5 by the taxpayer on or after the zone expiration date. However,
6 wages paid or incurred with respect to qualified employees who
7 are employed by the taxpayer within the enterprise zone within
8 the 60-month period prior to the zone expiration date shall continue
9 to qualify for the credit under this section after the zone expiration
10 date, in accordance with all provisions of this section applied as
11 if the enterprise zone designation were still in existence and
12 binding.

13 (D) *Qualified wages received by the employee from the taxpayer*
14 *during the taxable year shall exceed an average monthly wage of*
15 *two thousand dollars (\$2,000).*

16 (2) “Minimum wage” means the wage established by the
17 Industrial Welfare Commission as provided for in Chapter 1
18 (commencing with Section 1171) of Part 4 of Division 2 of the
19 Labor Code.

20 (3) “Zone expiration date” means the date the enterprise zone
21 designation expires, is no longer binding, or becomes inoperative.

22 (4) (A) “Qualified employee” means an individual who meets
23 all of the following requirements:

24 (i) At least 90 percent of whose services for the taxpayer during
25 the taxable year are directly related to the conduct of the taxpayer’s
26 trade or business located in an enterprise zone.

27 (ii) Performs at least 50 percent of his or her services for the
28 taxpayer during the taxable year in an enterprise zone.

29 (iii) Is hired by the taxpayer after the date of original designation
30 of the area in which services were performed as an enterprise zone.

31 (iv) Is any of the following:

32 (I) Immediately preceding the qualified employee’s
33 commencement of employment with the taxpayer, was a person
34 eligible for services under the federal ~~Job Training Partnership~~
35 *Workforce Investment Act of 1998* (29 U.S.C. Sec. ~~1501~~ 2801 et
36 seq.), or its successor, who is receiving, or is eligible to receive,
37 subsidized employment, training, or services funded by the federal
38 ~~Job Training Partnership~~ *Workforce Investment Act of 1998*, or its
39 successor.

1 (II) Immediately preceding the qualified employee's
2 commencement of employment with the taxpayer, was a person
3 eligible to be a voluntary or mandatory registrant under the ~~Greater~~
4 ~~Avenues for Independence Act of 1985 (GAIN)~~ *welfare-to-work*
5 *activities under the CalWORKs program* provided for ~~pursuant to~~
6 ~~in Article 3.2 1 (commencing with Section 11320) 11200~~ of
7 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
8 Code, or its successor.

9 (III) Immediately preceding the qualified employee's
10 commencement of employment with the taxpayer, was an
11 economically disadvantaged individual 14 years of age or older.

12 (IV) Immediately preceding the qualified employee's
13 commencement of employment with the taxpayer, was a dislocated
14 worker who meets any of the following:

15 (aa) Has been terminated or laid off or who has received a notice
16 of termination or layoff from employment, is eligible for or has
17 exhausted entitlement to unemployment insurance benefits, and
18 is unlikely to return to his or her previous industry or occupation.

19 (bb) Has been terminated or has received a notice of termination
20 of employment as a result of any permanent closure or any
21 substantial layoff at a plant, facility, or enterprise, including an
22 individual who has not received written notification but whose
23 employer has made a public announcement of the closure or layoff.

24 (cc) Is long-term unemployed and has limited opportunities for
25 employment or reemployment in the same or a similar occupation
26 in the area in which the individual resides, including an individual
27 55 years of age or older who may have substantial barriers to
28 employment by reason of age.

29 (dd) Was self-employed (including farmers and ranchers) and
30 is unemployed as a result of general economic conditions in the
31 community in which he or she resides or because of natural
32 disasters.

33 (ee) Was a civilian employee of the Department of Defense
34 employed at a military installation being closed or realigned under
35 the Defense Base Closure and Realignment Act of 1990 *or an*
36 *employee employed in an industry that was significantly impacted*
37 *by sequestration in the federal Balanced Budget and Emergency*
38 *Deficit Control Act of 1985 (BBEDCA, Title II of Public Law*
39 *99-177, commonly known as the Gramm-Rudman-Hollings Act).*

1 (ff) Was an active member of the armed forces or National
2 Guard as of September 30, 1990, and was either involuntarily
3 separated or separated pursuant to a special benefits program.

4 (gg) Is a seasonal or migrant worker who experiences chronic
5 seasonal unemployment and underemployment in the agriculture
6 industry, aggravated by continual advancements in technology and
7 mechanization.

8 (hh) Has been terminated or laid off, or has received a notice
9 of termination or layoff, as a consequence of compliance with the
10 Clean Air Act *or the California Global Warming Solutions Act of*
11 *2006 (Division 25.5 (commencing with Section 38500) of the*
12 *Health and Safety Code).*

13 (V) Immediately preceding the qualified employee's
14 commencement of employment with the taxpayer, was a disabled
15 individual who is eligible for or enrolled in, or has completed a
16 state rehabilitation plan or is a service-connected disabled veteran,
17 veteran of the Vietnam era, or veteran who is recently separated
18 from military service.

19 (VI) Immediately preceding the qualified employee's
20 commencement of employment with the taxpayer, was an
21 ex-offender. An individual shall be treated as convicted if he or
22 she was placed on probation by a state court without a finding of
23 guilt.

24 (VII) Immediately preceding the qualified employee's
25 commencement of employment with the taxpayer, was a person
26 eligible for or a recipient of any of the following:

27 (aa) Federal Supplemental Security Income benefits.

28 ~~(bb) Aid to Families with Dependent Children.~~

29 (bb) *Welfare-to-work activities under the CalWORKs program.*

30 (cc) CalFresh benefits.

31 (dd) State and local general assistance.

32 (VIII) Immediately preceding the qualified employee's
33 commencement of employment with the taxpayer, was a member
34 of a federally recognized Indian tribe, band, or other group of
35 Native American descent.

36 (IX) Immediately preceding the qualified employee's
37 commencement of employment with the taxpayer, was a resident
38 of a targeted employment area, as defined in Section 7072 of the
39 Government Code.

1 (X) An employee who qualified the taxpayer for the enterprise
2 zone hiring credit under former Section 17053.8 or the program
3 area hiring credit under former Section 17053.11.

4 (XI) Immediately preceding the qualified employee's
5 commencement of employment with the taxpayer, was a member
6 of a targeted group, as defined in Section 51(d) of the Internal
7 Revenue Code, or its successor.

8 (B) ~~Priority for employment shall be provided~~ *The taxpayer*
9 *shall give priority for employment* to an individual who is enrolled
10 in a qualified program under the federal Job Training Partnership
11 Act or *welfare-to-work activities under the Greater Avenues for*
12 ~~Independence Act of 1985~~ *CalWORKs program* or who is eligible
13 as a member of a targeted group under the Work Opportunity Tax
14 Credit (Section 51 of the Internal Revenue Code), or its successor.

15 (5) "Taxpayer" means a person or entity engaged in a trade or
16 business within an enterprise zone designated pursuant to Chapter
17 12.8 (commencing with Section 7070) of the Government Code.

18 (6) "Seasonal employment" means employment by a taxpayer
19 that has regular and predictable substantial reductions in trade or
20 business operations.

21 (c) The taxpayer shall do both of the following:

22 (1) Obtain from the Employment Development Department, as
23 permitted by federal law, the local county or city Job Training
24 Partnership Act administrative entity, the local county ~~GAIN~~ office
25 *department administering welfare-to-work activities under the*
26 *CalWORKs program* or social services agency, or the local
27 government administering the enterprise zone, a certification which
28 provides that a qualified employee meets the eligibility
29 requirements specified in clause (iv) of subparagraph (A) of
30 paragraph (4) of subdivision (b). The Employment Development
31 Department may provide preliminary screening and referral to a
32 certifying agency. The Employment Development Department
33 shall develop a form for this purpose. The Department of Housing
34 and Community Development shall develop regulations governing
35 the issuance of certificates by local governments pursuant to
36 subdivision (a) of Section 7086 of the Government Code.

37 (2) Retain a copy of the certification and provide it upon request
38 to the Franchise Tax Board.

39 (d) (1) For purposes of this section:

1 (A) All employees of trades or businesses, which are not
2 incorporated, that are under common control shall be treated as
3 employed by a single taxpayer.

4 (B) The credit, if any, allowable by this section with respect to
5 each trade or business shall be determined by reference to its
6 proportionate share of the expense of the qualified wages giving
7 rise to the credit, and shall be allocated in that manner.

8 (C) Principles that apply in the case of controlled groups of
9 corporations, as specified in subdivision (d) of Section 23622.7,
10 shall apply with respect to determining employment.

11 (2) If an employer acquires the major portion of a trade or
12 business of another employer (hereinafter in this paragraph referred
13 to as the “predecessor”) or the major portion of a separate unit of
14 a trade or business of a predecessor, then, for purposes of applying
15 this section (other than subdivision (e)) for any calendar year
16 ending after that acquisition, the employment relationship between
17 a qualified employee and an employer shall not be treated as
18 terminated if the employee continues to be employed in that trade
19 or business.

20 (e) (1) (A) If the employment, other than seasonal employment,
21 of any qualified employee, with respect to whom qualified wages
22 are taken into account under subdivision (a), is terminated by the
23 taxpayer at any time during the first 270 days of that employment
24 (whether or not consecutive) or before the close of the 270th
25 calendar day after the day in which that employee completes 90
26 days of employment with the taxpayer, the tax imposed by this
27 part for the taxable year in which that employment is terminated
28 shall be increased by an amount equal to the credit allowed under
29 subdivision (a) for that taxable year and all prior taxable years
30 attributable to qualified wages paid or incurred with respect to that
31 employee.

32 (B) If the seasonal employment of any qualified employee, with
33 respect to whom qualified wages are taken into account under
34 subdivision (a), is not continued by the taxpayer for a period of
35 270 days of employment during the 60-month period beginning
36 with the day the qualified employee commences seasonal
37 employment with the taxpayer, the tax imposed by this part, for
38 the taxable year that includes the 60th month following the month
39 in which the qualified employee commences seasonal employment
40 with the taxpayer, shall be increased by an amount equal to the

1 credit allowed under subdivision (a) for that taxable year and all
2 prior taxable years attributable to qualified wages paid or incurred
3 with respect to that qualified employee.

4 (2) (A) Subparagraph (A) of paragraph (1) shall not apply to
5 any of the following:

6 (i) A termination of employment of a qualified employee who
7 voluntarily leaves the employment of the taxpayer.

8 (ii) A termination of employment of a qualified employee who,
9 before the close of the period referred to in paragraph (1), becomes
10 disabled and unable to perform the services of that employment,
11 unless that disability is removed before the close of that period
12 and the taxpayer fails to offer reemployment to that employee.

13 (iii) A termination of employment of a qualified employee, if
14 it is determined that the termination was due to the misconduct (as
15 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
16 the California Code of Regulations) of that employee.

17 (iv) A termination of employment of a qualified employee due
18 to a substantial reduction in the trade or business operations of the
19 taxpayer.

20 (v) A termination of employment of a qualified employee, if
21 that employee is replaced by other qualified employees so as to
22 create a net increase in both the number of employees and the
23 hours of employment.

24 (B) Subparagraph (B) of paragraph (1) shall not apply to any
25 of the following:

26 (i) A failure to continue the seasonal employment of a qualified
27 employee who voluntarily fails to return to the seasonal
28 employment of the taxpayer.

29 (ii) A failure to continue the seasonal employment of a qualified
30 employee who, before the close of the period referred to in
31 subparagraph (B) of paragraph (1), becomes disabled and unable
32 to perform the services of that seasonal employment, unless that
33 disability is removed before the close of that period and the
34 taxpayer fails to offer seasonal employment to that qualified
35 employee.

36 (iii) A failure to continue the seasonal employment of a qualified
37 employee, if it is determined that the failure to continue the
38 seasonal employment was due to the misconduct (as defined in
39 Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California
40 Code of Regulations) of that qualified employee.

1 (iv) A failure to continue seasonal employment of a qualified
2 employee due to a substantial reduction in the regular seasonal
3 trade or business operations of the taxpayer.

4 (v) A failure to continue the seasonal employment of a qualified
5 employee, if that qualified employee is replaced by other qualified
6 employees so as to create a net increase in both the number of
7 seasonal employees and the hours of seasonal employment.

8 (C) For purposes of paragraph (1), the employment relationship
9 between the taxpayer and a qualified employee shall not be treated
10 as terminated by reason of a mere change in the form of conducting
11 the trade or business of the taxpayer, if the qualified employee
12 continues to be employed in that trade or business and the taxpayer
13 retains a substantial interest in that trade or business.

14 (3) Any increase in tax under paragraph (1) shall not be treated
15 as tax imposed by this part for purposes of determining the amount
16 of any credit allowable under this part.

17 (f) In the case of an estate or trust, both of the following apply:

18 (1) The qualified wages for any taxable year shall be apportioned
19 between the estate or trust and the beneficiaries on the basis of the
20 income of the estate or trust allocable to each.

21 (2) Any beneficiary to whom any qualified wages have been
22 apportioned under paragraph (1) shall be treated, for purposes of
23 this part, as the employer with respect to those wages.

24 (g) For purposes of this section, “enterprise zone” means an
25 area designated as an enterprise zone pursuant to Chapter 12.8
26 (commencing with Section 7070) of Division 7 of Title 1 of the
27 Government Code.

28 (h) The credit allowable under this section shall be reduced by
29 the credit allowed under Sections 17053.10, 17053.17, and
30 17053.46 claimed for the same employee. The credit shall also be
31 reduced by the federal credit allowed under Section 51 of the
32 Internal Revenue Code.

33 In addition, any deduction otherwise allowed under this part for
34 the wages or salaries paid or incurred by the taxpayer upon which
35 the credit is based shall be reduced by the amount of the credit,
36 prior to any reduction required by subdivision (i) or (j).

37 (i) In the case where the credit otherwise allowed under this
38 section exceeds the “net tax” for the taxable year, that portion of
39 the credit that exceeds the “net tax” may be carried over and added
40 to the credit, if any, in succeeding taxable years, until the credit is

1 exhausted. The credit shall be applied first to the earliest taxable
2 years possible.

3 (j) (1) The amount of the credit otherwise allowed under this
4 section and Section 17053.70, including any credit carryover from
5 prior years, that may reduce the “net tax” for the taxable year shall
6 not exceed the amount of tax which would be imposed on the
7 taxpayer’s business income attributable to the enterprise zone
8 determined as if that attributable income represented all of the
9 income of the taxpayer subject to tax under this part.

10 (2) Attributable income shall be that portion of the taxpayer’s
11 California source business income that is apportioned to the
12 enterprise zone. For that purpose, the taxpayer’s business income
13 attributable to sources in this state first shall be determined in
14 accordance with Chapter 17 (commencing with Section 25101) of
15 Part 11. That business income shall be further apportioned to the
16 enterprise zone in accordance with Article 2 (commencing with
17 Section 25120) of Chapter 17 of Part 11, modified for purposes
18 of this section in accordance with paragraph (3).

19 (3) Business income shall be apportioned to the enterprise zone
20 by multiplying the total California business income of the taxpayer
21 by a fraction, the numerator of which is the property factor plus
22 the payroll factor, and the denominator of which is two. For
23 purposes of this paragraph:

24 (A) The property factor is a fraction, the numerator of which is
25 the average value of the taxpayer’s real and tangible personal
26 property owned or rented and used in the enterprise zone during
27 the taxable year, and the denominator of which is the average value
28 of all the taxpayer’s real and tangible personal property owned or
29 rented and used in this state during the taxable year.

30 (B) The payroll factor is a fraction, the numerator of which is
31 the total amount paid by the taxpayer in the enterprise zone during
32 the taxable year for compensation, and the denominator of which
33 is the total compensation paid by the taxpayer in this state during
34 the taxable year.

35 (4) The portion of any credit remaining, if any, after application
36 of this subdivision, shall be carried over to succeeding taxable
37 years, as if it were an amount exceeding the “net tax” for the
38 taxable year, as provided in subdivision (i).

1 (k) The changes made to this section by the act adding this
2 subdivision shall apply to taxable years beginning on or after
3 January 1, 1997.

4 *SEC. 2. Section 23622.7 of the Revenue and Taxation Code is*
5 *amended to read:*

6 23622.7. (a) There shall be allowed a credit against the “tax”
7 (as defined by Section 23036) to a taxpayer who employs a
8 qualified employee in an enterprise zone during the taxable year.
9 The credit shall be equal to the sum of each of the following:

10 (1) Fifty percent of qualified wages in the first year of
11 employment.

12 (2) Forty percent of qualified wages in the second year of
13 employment.

14 (3) Thirty percent of qualified wages in the third year of
15 employment.

16 (4) Twenty percent of qualified wages in the fourth year of
17 employment.

18 (5) Ten percent of qualified wages in the fifth year of
19 employment.

20 (b) For purposes of this section:

21 (1) “Qualified wages” means:

22 (A) (i) Except as provided in clause (ii), that portion of wages
23 paid or incurred by the taxpayer during the taxable year to qualified
24 employees that does not exceed 150 percent of the minimum wage.

25 (ii) For up to 1,350 qualified employees who are employed by
26 the taxpayer in the Long Beach Enterprise Zone in aircraft
27 manufacturing activities described in Codes 3721 to 3728,
28 inclusive, and Code 3812 of the Standard Industrial Classification
29 (SIC) Manual published by the United States Office of
30 Management and Budget, 1987 edition, “qualified wages” means
31 that portion of hourly wages that does not exceed 202 percent of
32 the minimum wage.

33 (B) Wages received during the 60-month period beginning with
34 the first day the employee commences employment with the
35 taxpayer. Reemployment in connection with any increase, including
36 a regularly occurring seasonal increase, in the trade or business
37 operations of the taxpayer does not constitute commencement of
38 employment for purposes of this section.

39 (C) Qualified wages do not include any wages paid or incurred
40 by the taxpayer on or after the zone expiration date. However,

1 wages paid or incurred with respect to qualified employees who
 2 are employed by the taxpayer within the enterprise zone within
 3 the 60-month period prior to the zone expiration date shall continue
 4 to qualify for the credit under this section after the zone expiration
 5 date, in accordance with all provisions of this section applied as
 6 if the enterprise zone designation were still in existence and
 7 binding.

8 (D) *Qualified wages received by the employee from the taxpayer*
 9 *during the taxable year shall exceed an average monthly wage of*
 10 *two thousand dollars (\$2,000).*

11 (2) “Minimum wage” means the wage established by the
 12 Industrial Welfare Commission as provided for in Chapter 1
 13 (commencing with Section 1171) of Part 4 of Division 2 of the
 14 Labor Code.

15 (3) “Zone expiration date” means the date the enterprise zone
 16 designation expires, is no longer binding, or becomes inoperative.

17 (4) (A) “Qualified employee” means an individual who meets
 18 all of the following requirements:

19 (i) At least 90 percent of whose services for the taxpayer during
 20 the taxable year are directly related to the conduct of the taxpayer’s
 21 trade or business located in an enterprise zone.

22 (ii) Performs at least 50 percent of his or her services for the
 23 taxpayer during the taxable year in an enterprise zone.

24 (iii) Is hired by the taxpayer after the date of original designation
 25 of the area in which services were performed as an enterprise zone.

26 (iv) Is any of the following:

27 (I) Immediately preceding the qualified employee’s
 28 commencement of employment with the taxpayer, was a person
 29 eligible for services under the federal ~~Job Training Partnership~~
 30 *Workforce Investment Act of 1998* (29 U.S.C. Sec. ~~1501~~ 2801 et
 31 seq.), or its successor, who is receiving, or is eligible to receive,
 32 subsidized employment, training, or services funded by the federal
 33 ~~Job Training Partnership~~ *Workforce Investment Act of 1998*, or its
 34 successor.

35 (II) Immediately preceding the qualified employee’s
 36 commencement of employment with the taxpayer, was a person
 37 eligible to be a voluntary or mandatory registrant under the ~~Greater~~
 38 ~~Avenues for Independence Act of 1985 (GAIN)~~ *welfare-to-work*
 39 *activities under the CalWORKs program* provided for ~~pursuant to~~
 40 *in Article 3.2 1* (commencing with Section ~~11320~~ 11200) of

1 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
2 Code, or its successor.

3 (III) Immediately preceding the qualified employee's
4 commencement of employment with the taxpayer, was an
5 economically disadvantaged individual 14 years of age or older.

6 (IV) Immediately preceding the qualified employee's
7 commencement of employment with the taxpayer, was a dislocated
8 worker who meets any of the following:

9 (aa) Has been terminated or laid off or who has received a notice
10 of termination or layoff from employment, is eligible for or has
11 exhausted entitlement to unemployment insurance benefits, and
12 is unlikely to return to his or her previous industry or occupation.

13 (bb) Has been terminated or has received a notice of termination
14 of employment as a result of any permanent closure or any
15 substantial layoff at a plant, facility, or enterprise, including an
16 individual who has not received written notification but whose
17 employer has made a public announcement of the closure or layoff.

18 (cc) Is long-term unemployed and has limited opportunities for
19 employment or reemployment in the same or a similar occupation
20 in the area in which the individual resides, including an individual
21 55 years of age or older who may have substantial barriers to
22 employment by reason of age.

23 (dd) Was self-employed (including farmers and ranchers) and
24 is unemployed as a result of general economic conditions in the
25 community in which he or she resides or because of natural
26 disasters.

27 (ee) Was a civilian employee of the Department of Defense
28 employed at a military installation being closed or realigned under
29 the Defense Base Closure and Realignment Act of 1990 *or an*
30 *employee employed in an industry that was significantly impacted*
31 *by sequestration in the federal Balanced Budget and Emergency*
32 *Deficit Control Act of 1985 (BBEDCA, Title II of Public Law*
33 *99-177, commonly known as the Gramm-Rudman-Hollings Act).*

34 (ff) Was an active member of the armed forces or National
35 Guard as of September 30, 1990, and was either involuntarily
36 separated or separated pursuant to a special benefits program.

37 (gg) Is a seasonal or migrant worker who experiences chronic
38 seasonal unemployment and underemployment in the agriculture
39 industry, aggravated by continual advancements in technology and
40 mechanization.

- 1 (hh) Has been terminated or laid off, or has received a notice
 2 of termination or layoff, as a consequence of compliance with the
 3 Clean Air Act *or the California Global Warming Solutions Act of*
 4 *2006 (Division 25.5 (commencing with Section 38500) of the*
 5 *Health and Safety Code).*
- 6 (V) Immediately preceding the qualified employee’s
 7 commencement of employment with the taxpayer, was a disabled
 8 individual who is eligible for or enrolled in, or has completed a
 9 state rehabilitation plan or is a service-connected disabled veteran,
 10 veteran of the Vietnam era, or veteran who is recently separated
 11 from military service.
- 12 (VI) Immediately preceding the qualified employee’s
 13 commencement of employment with the taxpayer, was an
 14 ex-offender. An individual shall be treated as convicted if he or
 15 she was placed on probation by a state court without a finding of
 16 guilt.
- 17 (VII) Immediately preceding the qualified employee’s
 18 commencement of employment with the taxpayer, was a person
 19 eligible for or a recipient of any of the following:
- 20 (aa) Federal Supplemental Security Income benefits.
 - 21 ~~(bb) Aid to Families with Dependent Children.~~
 - 22 (bb) *Welfare-to-work activities under the CalWORKs program.*
 - 23 (cc) CalFresh benefits.
 - 24 (dd) State and local general assistance.
- 25 (VIII) Immediately preceding the qualified employee’s
 26 commencement of employment with the taxpayer, was a member
 27 of a federally recognized Indian tribe, band, or other group of
 28 Native American descent.
- 29 (IX) Immediately preceding the qualified employee’s
 30 commencement of employment with the taxpayer, was a resident
 31 of a targeted employment area (as defined in Section 7072 of the
 32 Government Code).
- 33 (X) An employee who qualified the taxpayer for the enterprise
 34 zone hiring credit under former Section 23622 or the program area
 35 hiring credit under former Section 23623.
- 36 (XI) Immediately preceding the qualified employee’s
 37 commencement of employment with the taxpayer, was a member
 38 of a targeted group, as defined in Section 51(d) of the Internal
 39 Revenue Code, or its successor.

1 (B) ~~Priority for employment shall be provided~~*The taxpayer*
2 *shall give priority for employment* to an individual who is enrolled
3 in a qualified program under the federal Job Training Partnership
4 Act or *welfare-to-work activities under the Greater Avenues for*
5 ~~Independence Act of 1985~~ *CalWORKs program* or who is eligible
6 as a member of a targeted group under the Work Opportunity Tax
7 Credit (Section 51 of the Internal Revenue Code), or its successor.

8 (5) “Taxpayer” means a corporation engaged in a trade or
9 business within an enterprise zone designated pursuant to Chapter
10 12.8 (commencing with Section 7070) of Division 7 of Title 1 of
11 the Government Code.

12 (6) “Seasonal employment” means employment by a taxpayer
13 that has regular and predictable substantial reductions in trade or
14 business operations.

15 (c) The taxpayer shall do both of the following:

16 (1) Obtain from the Employment Development Department, as
17 permitted by federal law, the local county or city Job Training
18 Partnership Act administrative entity, the local county ~~GAIN~~ office
19 *department administering welfare-to-work activities under the*
20 *CalWORKs program* or social services agency, or the local
21 government administering the enterprise zone, a certification that
22 provides that a qualified employee meets the eligibility
23 requirements specified in clause (iv) of subparagraph (A) of
24 paragraph (4) of subdivision (b). The Employment Development
25 Department may provide preliminary screening and referral to a
26 certifying agency. The Employment Development Department
27 shall develop a form for this purpose. The Department of Housing
28 and Community Development shall develop regulations governing
29 the issuance of certificates by local governments pursuant to
30 subdivision (a) of Section 7086 of the Government Code.

31 (2) Retain a copy of the certification and provide it upon request
32 to the Franchise Tax Board.

33 (d) (1) For purposes of this section:

34 (A) All employees of all corporations which are members of
35 the same controlled group of corporations shall be treated as
36 employed by a single taxpayer.

37 (B) The credit, if any, allowable by this section to each member
38 shall be determined by reference to its proportionate share of the
39 expense of the qualified wages giving rise to the credit, and shall
40 be allocated in that manner.

1 (C) For purposes of this subdivision, “controlled group of
2 corporations” means “controlled group of corporations” as defined
3 in Section 1563(a) of the Internal Revenue Code, except that:

4 (i) “More than 50 percent” shall be substituted for “at least 80
5 percent” each place it appears in Section 1563(a)(1) of the Internal
6 Revenue Code.

7 (ii) The determination shall be made without regard to
8 subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal
9 Revenue Code.

10 (2) If an employer acquires the major portion of a trade or
11 business of another employer (hereinafter in this paragraph referred
12 to as the “predecessor”) or the major portion of a separate unit of
13 a trade or business of a predecessor, then, for purposes of applying
14 this section (other than subdivision (e)) for any calendar year
15 ending after that acquisition, the employment relationship between
16 a qualified employee and an employer shall not be treated as
17 terminated if the employee continues to be employed in that trade
18 or business.

19 (e) (1) (A) If the employment, other than seasonal employment,
20 of any qualified employee with respect to whom qualified wages
21 are taken into account under subdivision (a) is terminated by the
22 taxpayer at any time during the first 270 days of that employment,
23 whether or not consecutive, or before the close of the 270th
24 calendar day after the day in which that employee completes 90
25 days of employment with the taxpayer, the tax imposed by this
26 part for the taxable year in which that employment is terminated
27 shall be increased by an amount equal to the credit allowed under
28 subdivision (a) for that taxable year and all prior taxable years
29 attributable to qualified wages paid or incurred with respect to that
30 employee.

31 (B) If the seasonal employment of any qualified employee, with
32 respect to whom qualified wages are taken into account under
33 subdivision (a) is not continued by the taxpayer for a period of
34 270 days of employment during the 60-month period beginning
35 with the day the qualified employee commences seasonal
36 employment with the taxpayer, the tax imposed by this part, for
37 the taxable year that includes the 60th month following the month
38 in which the qualified employee commences seasonal employment
39 with the taxpayer, shall be increased by an amount equal to the
40 credit allowed under subdivision (a) for that taxable year and all

1 prior taxable years attributable to qualified wages paid or incurred
2 with respect to that qualified employee.

3 (2) (A) Subparagraph (A) of paragraph (1) shall not apply to
4 any of the following:

5 (i) A termination of employment of a qualified employee who
6 voluntarily leaves the employment of the taxpayer.

7 (ii) A termination of employment of a qualified employee who,
8 before the close of the period referred to in subparagraph (A) of
9 paragraph (1), becomes disabled and unable to perform the services
10 of that employment, unless that disability is removed before the
11 close of that period and the taxpayer fails to offer reemployment
12 to that employee.

13 (iii) A termination of employment of a qualified employee, if
14 it is determined that the termination was due to the misconduct (as
15 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
16 the California Code of Regulations) of that employee.

17 (iv) A termination of employment of a qualified employee due
18 to a substantial reduction in the trade or business operations of the
19 taxpayer.

20 (v) A termination of employment of a qualified employee, if
21 that employee is replaced by other qualified employees so as to
22 create a net increase in both the number of employees and the
23 hours of employment.

24 (B) Subparagraph (B) of paragraph (1) shall not apply to any
25 of the following:

26 (i) A failure to continue the seasonal employment of a qualified
27 employee who voluntarily fails to return to the seasonal
28 employment of the taxpayer.

29 (ii) A failure to continue the seasonal employment of a qualified
30 employee who, before the close of the period referred to in
31 subparagraph (B) of paragraph (1), becomes disabled and unable
32 to perform the services of that seasonal employment, unless that
33 disability is removed before the close of that period and the
34 taxpayer fails to offer seasonal employment to that qualified
35 employee.

36 (iii) A failure to continue the seasonal employment of a qualified
37 employee, if it is determined that the failure to continue the
38 seasonal employment was due to the misconduct (as defined in
39 Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California
40 Code of Regulations) of that qualified employee.

1 (iv) A failure to continue seasonal employment of a qualified
2 employee due to a substantial reduction in the regular seasonal
3 trade or business operations of the taxpayer.

4 (v) A failure to continue the seasonal employment of a qualified
5 employee, if that qualified employee is replaced by other qualified
6 employees so as to create a net increase in both the number of
7 seasonal employees and the hours of seasonal employment.

8 (C) For purposes of paragraph (1), the employment relationship
9 between the taxpayer and a qualified employee shall not be treated
10 as terminated by either of the following:

11 (i) By a transaction to which Section 381(a) of the Internal
12 Revenue Code applies, if the qualified employee continues to be
13 employed by the acquiring corporation.

14 (ii) By reason of a mere change in the form of conducting the
15 trade or business of the taxpayer, if the qualified employee
16 continues to be employed in that trade or business and the taxpayer
17 retains a substantial interest in that trade or business.

18 (3) Any increase in tax under paragraph (1) shall not be treated
19 as tax imposed by this part for purposes of determining the amount
20 of any credit allowable under this part.

21 (f) Rules similar to the rules provided in Section 46(e) and (h)
22 of the Internal Revenue Code shall apply to both of the following:

23 (1) An organization to which Section 593 of the Internal
24 Revenue Code applies.

25 (2) A regulated investment company or a real estate investment
26 trust subject to taxation under this part.

27 (g) For purposes of this section, “enterprise zone” means an
28 area designated as an enterprise zone pursuant to Chapter 12.8
29 (commencing with Section 7070) of Division 7 of Title 1 of the
30 Government Code.

31 (h) The credit allowable under this section shall be reduced by
32 the credit allowed under Sections 23623.5, 23625, and 23646
33 claimed for the same employee. The credit shall also be reduced
34 by the federal credit allowed under Section 51 of the Internal
35 Revenue Code.

36 In addition, any deduction otherwise allowed under this part for
37 the wages or salaries paid or incurred by the taxpayer upon which
38 the credit is based shall be reduced by the amount of the credit,
39 prior to any reduction required by subdivision (i) or (j).

1 (i) In the case where the credit otherwise allowed under this
2 section exceeds the “tax” for the taxable year, that portion of the
3 credit that exceeds the “tax” may be carried over and added to the
4 credit, if any, in succeeding taxable years, until the credit is
5 exhausted. The credit shall be applied first to the earliest taxable
6 years possible.

7 (j) (1) The amount of the credit otherwise allowed under this
8 section and Section 23612.2, including any credit carryover from
9 prior years, that may reduce the “tax” for the taxable year shall
10 not exceed the amount of tax which would be imposed on the
11 taxpayer’s business income attributable to the enterprise zone
12 determined as if that attributable income represented all of the
13 income of the taxpayer subject to tax under this part.

14 (2) Attributable income shall be that portion of the taxpayer’s
15 California source business income that is apportioned to the
16 enterprise zone. For that purpose, the taxpayer’s business
17 attributable to sources in this state first shall be determined in
18 accordance with Chapter 17 (commencing with Section 25101).
19 That business income shall be further apportioned to the enterprise
20 zone in accordance with Article 2 (commencing with Section
21 25120) of Chapter 17, modified for purposes of this section in
22 accordance with paragraph (3).

23 (3) Business income shall be apportioned to the enterprise zone
24 by multiplying the total California business income of the taxpayer
25 by a fraction, the numerator of which is the property factor plus
26 the payroll factor, and the denominator of which is two. For
27 purposes of this paragraph:

28 (A) The property factor is a fraction, the numerator of which is
29 the average value of the taxpayer’s real and tangible personal
30 property owned or rented and used in the enterprise zone during
31 the income year, and the denominator of which is the average value
32 of all the taxpayer’s real and tangible personal property owned or
33 rented and used in this state during the income year.

34 (B) The payroll factor is a fraction, the numerator of which is
35 the total amount paid by the taxpayer in the enterprise zone during
36 the income year for compensation, and the denominator of which
37 is the total compensation paid by the taxpayer in this state during
38 the income year.

39 (4) The portion of any credit remaining, if any, after application
40 of this subdivision, shall be carried over to succeeding taxable

1 years, as if it were an amount exceeding the “tax” for the taxable
2 year, as provided in subdivision (i).

3 (k) The changes made to this section by the act adding this
4 subdivision shall apply to taxable years on or after January 1, 1997.

5 *SEC. 3. This act provides for a tax levy within the meaning of*
6 *Article IV of the Constitution and shall go into immediate effect.*

7 ~~SECTION 1. The Legislature finds and declares all of the~~
8 ~~following:~~

9 ~~(a) California workers and businesses are currently facing some~~
10 ~~of the harshest economic conditions since the Great Depression.~~

11 ~~(b) Unemployment in California remains in the double digits~~
12 ~~after the mortgage crisis and the subsequent economic collapse.~~

13 ~~(c) It is estimated that over 2.5 million Californians have lost~~
14 ~~jobs during this recession and bankruptcies among small businesses~~
15 ~~have been nearly double the national average.~~

16 ~~SEC. 2. It is the intent of the Legislature to enact legislation~~
17 ~~that promotes job and business growth and encourages economic~~
18 ~~development.~~