

AMENDED IN SENATE SEPTEMBER 10, 2013

AMENDED IN SENATE SEPTEMBER 5, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 106

Introduced by Committee on Budget (Skinner (Chair), Bloom, Campos, Chesbro, Daly, Dickinson, Gordon, Jones-Sawyer, Mitchell, Mullin, Muratsuchi, Nazarian, Stone, and Ting)

January 10, 2013

An act to ~~amend Sections 1091, 13073.5, 30061, and 30070 of the Government Code, to amend Sections 1231 and 13821 of the Penal Code, to amend Sections 17053.33, 17053.70, 18410.2, 23612.2, and 23633 of the Revenue and Taxation Code, and to amend Sections 1403, 18220, and 18220.1 of the Welfare and Institutions Code, relating to public finance, add Chapter 12.78 (commencing with Section 7069) to Division 7 of Title 1 to the Government Code, to amend Sections 17053.46, 17053.74, 23622.7, and 23646 of the Revenue and Taxation Code, and to amend Section 6 of Chapter 70 of the Statutes of 2013, relating to economic development, and making an appropriation therefor, to take effect immediately, bill related to the budget tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 106, as amended, Committee on Budget. ~~Public finance. Economic development: taxation: credits.~~

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a hiring credit for qualified taxpayers who hire qualified employees, as defined, within enterprise zones and local agency military base recovery areas (LAMBRAs), subject to specified criteria and requirements. Those

laws require that a taxpayer obtain a certification from the Employment Development Department, as permitted by federal law, the local county or city Job Training Partnership Act administrative entity, the local county GAIN office or social services agency, or the local government administering a specified area or zone that provides that a qualified employee meets the specified eligibility requirements. Those laws are repealed on December 1, 2019.

This bill would instead make these credits inoperative on January 1, 2014. This bill would authorize any local entity, as specified, authorized to issue a certification that provides that a qualified employee, qualified disadvantaged individual, or qualified displaced employee meets specified eligibility requirements, to continue to accept applications for certification and to issue the certifications up to but no later than January 1, 2015. This bill would also make other clarifying and technical 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 prohibits certain public officials and employees from being financially interested in any contract made by them in their official capacity, or by any board of which they are members. An officer is not deemed to be interested in a contract entered into by a body or board of which the officer is a member if the officer has only a remote interest in the contract and other requirements are met. A remote interest is required to be publicly disclosed, and thereafter the public body may authorize, approve, or ratify the contract in question, but the officer or employee with the remote interest is disqualified from voting. A remote interest is defined to include, among others, the interest of a person who is an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code or a nonprofit corporation. Violation of these provisions is a crime.~~

~~This bill would include in the definition of remote interest the interest of a person who is an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(5) of the Internal Revenue Code.~~

~~By expanding the scope of an existing crime, this bill would impose a state-mandated local program.~~

~~Existing law establishes in the State Treasury the Local Revenue Fund 2011, a continuously appropriated fund, and requires that moneys in the fund be allocated exclusively for public safety services, as defined. Existing law further establishes the Law Enforcement Services Account within that fund, and creates the Enhancing Law Enforcement Activities Subaccount and the Juvenile Justice Subaccount within the Law Enforcement Services Account.~~

~~Existing law allocates specified funds from the Enhancing Law Enforcement Activities Subaccount to local governments, including to cities and counties that charge fees to a city, special district, community college district, college, or university for the booking or detention of a person arrested and brought to a detention facility of the city or county. Existing law also allocates moneys in the subaccount for county sheriffs' departments, — California — Multi-Jurisdictional — Methamphetamine Enforcement Teams, Multi-Agency Gang Enforcement Consortium, Sexual Assault Felony Enforcement Teams, High Technology Theft Apprehension and Prosecution Program, Gang Violence Suppression Program, Central Valley and Central Coast Rural Crime Prevention Programs, jail construction and operation, criminal prosecution, juvenile justice plans, habitual truants, runaways, and children at risk of being wards of the court or under juvenile supervision or supervision of the county probation department.~~

~~This bill would, subsequent to the allocation made to cities and counties that charge fees to a city, special district, community college district, college, or university for the booking or detention of a person arrested and brought to a detention facility of the city or county, revise the percentages of the remaining funds to be allocated for the other above-mentioned purposes from the Enhancing Law Enforcement Activities Subaccount.~~

~~Under existing law counties are authorized to establish a Community Corrections Performance Incentives Fund (CCPIF) to receive moneys related to the placement of felons under probation supervision, mandatory supervision, and postrelease community supervision. Programs funded through a CCPIF are required to identify and track specific outcome-based measures and report its findings to the Administrative Office of the Courts (AOC). The AOC then provides quarterly statistical information to the Department of Finance that includes, among other things, the number of felony convictions in the county and the number of felons who would have been subject to specified sentencing provisions had felony probation not been granted.~~

~~This bill would remove from the AOC's quarterly statistical information the number of felons who would have been subject to those sentencing provisions had felony probation not been granted.~~

~~The Personal Income Tax Law and the Corporation Tax Law allow a credit in an amount equal to the amount of sales or use tax paid in connection with qualified property that is purchased and placed in service before the date the enterprise zone or targeted tax area designation expires, is no longer binding, or becomes inoperative. Existing law repeals these provisions on December 1, 2014.~~

~~This bill would instead require the qualified property to be placed in service in the enterprise zone or the targeted tax area before January 1, 2015, and would repeal those provisions on December 1, 2015. The bill would also make clarifying changes to those provisions:~~

~~Existing law requires the Population Research Unit to, among other things, determine the census tracts that are within the highest quartile of census tracts with the highest civilian unemployment, and to sort the census tracts by the respective civilian unemployment rate of each in ascending order, or from the lowest, 0%, to the highest, 100%, as specified.~~

~~This bill would make clarifying changes to those provisions:~~

~~Existing law established the California Competes Tax Credit Committee, which consists of the Treasurer, the Director of Finance, the Director of the Governor's Office of Business and Economic Development, and one appointee each from the Senate and Assembly.~~

~~This bill would provide that the Director of the Governor's Office of Business and Economic Development is the chair. The bill would prohibit a member of the Legislature from being appointed to the committee.~~

~~Under existing law and until January 1, 2014, California is subject to an interstate compact for juveniles and that compact requires California, among other things, to appoint a commissioner to the Interstate Commission for Juveniles and to create a State Council for Interstate Juvenile Supervision.~~

~~This bill would extend the duration of the compact until January 1, 2016.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

The bill would appropriate \$100,000 from the General Fund to the Governor’s Office of Economic Development to provide staff support for the California Competes Tax Credit Committee.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

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

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

1 SECTION 1. Chapter 12.78 (commencing with Section 7069)
2 is added to Division 7 of Title 1 of the Government Code, to read:

3
4 CHAPTER 12.78. CERTIFICATION FOR ENTERPRISE ZONES,
5 TARGETED TAX AREAS, AND LOCAL AGENCY MILITARY BASE
6 RECOVERY AREAS HIRING CREDITS
7

8 7069. Notwithstanding the repeal of Chapter 12.8 (commencing
9 with Section 7070), Chapter 12.93 (commencing with Section
10 7097), and Chapter 12.97 (commencing with Section 7105) of the
11 Government Code by Chapter 69 of the Statutes of 2013, a local
12 entity formerly authorized by one or more of those chapters of the
13 Government Code to issue a certification that provides that a
14 qualified employee, qualified disadvantaged individual, or qualified
15 displaced employee meets the specified eligibility requirements
16 under Section 17053.34, 17053.46, 17053.47, 17053.74, 23622.7,
17 23622.8, 23634, or 23646 of the Revenue and Taxation Code may
18 continue to accept applications for the certification and to issue
19 the certifications up to but no later than January 1, 2015.

20 SEC. 2. Section 17053.46 of the Revenue and Taxation Code
21 is amended to read:

22 17053.46. (a) For each taxable year beginning on or after
23 January 1, 1995, there shall be allowed as a credit against the “net
24 tax” (as defined in Section 17039) to a qualified taxpayer for hiring
25 a qualified disadvantaged individual or a qualified displaced
26 employee during the taxable year for employment in the LAMBRA.

27 The credit shall be equal to the sum of each of the following:

28 (1) Fifty percent of the qualified wages in the first year of
29 employment.

- 1 (2) Forty percent of the qualified wages in the second year of
2 employment.
- 3 (3) Thirty percent of the qualified wages in the third year of
4 employment.
- 5 (4) Twenty percent of the qualified wages in the fourth year of
6 employment.
- 7 (5) Ten percent of the qualified wages in the fifth year of
8 employment.
- 9 (b) For purposes of this section:
 - 10 (1) “Qualified wages” means:
 - 11 (A) That portion of wages paid or incurred by the employer
12 during the taxable year to qualified disadvantaged individuals or
13 qualified displaced employees that does not exceed 150 percent
14 of the minimum wage.
 - 15 (B) The total amount of qualified wages which may be taken
16 into account for purposes of claiming the credit allowed under this
17 section shall not exceed two million dollars (\$2,000,000) per
18 taxable year.
 - 19 (C) Wages received during the 60-month period beginning with
20 the first day the individual commences employment with the
21 taxpayer. Reemployment in connection with any increase, including
22 a regularly occurring seasonal increase, in the trade or business
23 operations of the qualified taxpayer does not constitute
24 commencement of employment for purposes of this section.
 - 25 (D) Qualified wages do not include any wages paid or incurred
26 by the qualified taxpayer on or after the LAMBRA expiration date.
27 However, wages paid or incurred with respect to qualified
28 disadvantaged individuals or qualified displaced employees who
29 are employed by the qualified taxpayer within the LAMBRA within
30 the 60-month period prior to the LAMBRA expiration date shall
31 continue to qualify for the credit under this section after the
32 LAMBRA expiration date, in accordance with all provisions of
33 this section applied as if the LAMBRA designation were still in
34 existence and binding.
 - 35 (2) “Minimum wage” means the wage established by the
36 Industrial Welfare Commission as provided for in Chapter 1
37 (commencing with Section 1171) of Part 4 of Division 2 of the
38 Labor Code.

1 (3) “LAMBRA” means a local agency military base recovery
2 area designated in accordance with Section 7114 of the Government
3 Code.

4 (4) “Qualified disadvantaged individual” means an individual
5 who satisfies all of the following requirements:

6 (A) (i) At least 90 percent of whose services for the taxpayer
7 during the taxable year are directly related to the conduct of the
8 taxpayer’s trade or business located in a LAMBRA.

9 (ii) Who performs at least 50 percent of his or her services for
10 the taxpayer during the taxable year in the LAMBRA.

11 (B) Who is hired by the employer after the designation of the
12 area as a LAMBRA in which the individual’s services were
13 primarily performed.

14 (C) Who is any of the following immediately preceding the
15 individual’s commencement of employment with the taxpayer:

16 (i) An individual who has been determined eligible for services
17 under the federal Job Training Partnership Act (29 U.S.C. Sec.
18 1501 et seq.).

19 (ii) Any voluntary or mandatory registrant under the Greater
20 Avenues for Independence Act of 1985 as provided pursuant to
21 Article 3.2 (commencing with Section 11320) of Chapter 2 of Part
22 3 of Division 9 of the Welfare and Institutions Code.

23 (iii) An economically disadvantaged individual age 16 years or
24 older.

25 (iv) A dislocated worker who meets any of the following
26 conditions:

27 (I) Has been terminated or laid off or who has received a notice
28 of termination or layoff from employment, is eligible for or has
29 exhausted entitlement to unemployment insurance benefits, and
30 is unlikely to return to his or her previous industry or occupation.

31 (II) Has been terminated or has received a notice of termination
32 of employment as a result of any permanent closure or any
33 substantial layoff at a plant, facility, or enterprise, including an
34 individual who has not received written notification but whose
35 employer has made a public announcement of the closure or layoff.

36 (III) Is long-term unemployed and has limited opportunities for
37 employment or reemployment in the same or a similar occupation
38 in the area in which the individual resides, including an individual
39 55 years of age or older who may have substantial barriers to
40 employment by reason of age.

1 (IV) Was self-employed (including farmers and ranchers) and
2 is unemployed as a result of general economic conditions in the
3 community in which he or she resides or because of natural
4 disasters.

5 (V) Was a civilian employee of the Department of Defense
6 employed at a military installation being closed or realigned under
7 the Defense Base Closure and Realignment Act of 1990.

8 (VI) Was an active member of the Armed Forces or National
9 Guard as of September 30, 1990, and was either involuntarily
10 separated or separated pursuant to a special benefits program.

11 (VII) Experiences chronic seasonal unemployment and
12 underemployment in the agriculture industry, aggravated by
13 continual advancements in technology and mechanization.

14 (VIII) Has been terminated or laid off or has received a notice
15 of termination or layoff as a consequence of compliance with the
16 Clean Air Act.

17 (v) An individual who is enrolled in or has completed a state
18 rehabilitation plan or is a service-connected disabled veteran,
19 veteran of the Vietnam era, or veteran who is recently separated
20 from military service.

21 (vi) An ex-offender. An individual shall be treated as convicted
22 if he or she was placed on probation by a state court without a
23 finding of guilty.

24 (vii) A recipient of:

25 (I) Federal Supplemental Security Income benefits.

26 (II) Aid to Families with Dependent Children.

27 (III) CalFresh benefits.

28 (IV) State and local general assistance.

29 (viii) Is a member of a federally recognized Indian tribe, band,
30 or other group of Native American descent.

31 (5) “Qualified taxpayer” means a taxpayer or partnership that
32 conducts a trade or business within a LAMBRA and, for the first
33 two taxable years, has a net increase in jobs (defined as 2,000 paid
34 hours per employee per year) of one or more employees in the
35 LAMBRA.

36 (A) The net increase in the number of jobs shall be determined
37 by subtracting the total number of full-time employees (defined
38 as 2,000 paid hours per employee per year) the taxpayer employed
39 in this state in the taxable year prior to commencing business
40 operations in the LAMBRA from the total number of full-time

1 employees the taxpayer employed in this state during the second
2 taxable year after commencing business operations in the
3 LAMBRA. For taxpayers who commence doing business in this
4 state with their LAMBRA business operation, the number of
5 employees for the taxable year prior to commencing business
6 operations in the LAMBRA shall be zero. If the taxpayer has a net
7 increase in jobs in the state, the credit shall be allowed only if one
8 or more full-time employees is employed within the LAMBRA.

9 (B) The total number of employees employed in the LAMBRA
10 shall equal the sum of both of the following:

11 (i) The total number of hours worked in the LAMBRA for the
12 taxpayer by employees (not to exceed 2,000 hours per employee)
13 who are paid an hourly wage divided by 2,000.

14 (ii) The total number of months worked in the LAMBRA for
15 the taxpayer by employees who are salaried employees divided
16 by 12.

17 (C) In the case of a taxpayer who first commences doing
18 business in the LAMBRA during the taxable year, for purposes of
19 clauses (i) and (ii), respectively, of subparagraph (B), the divisors
20 “2,000” and “12” shall be multiplied by a fraction, the numerator
21 of which is the number of months of the taxable year that the
22 taxpayer was doing business in the LAMBRA and the denominator
23 of which is 12.

24 (6) “Qualified displaced employee” means an individual who
25 satisfies all of the following requirements:

26 (A) Any civilian or military employee of a base or former base
27 who has been displaced as a result of a federal base closure act.

28 (B) (i) At least 90 percent of whose services for the taxpayer
29 during the taxable year are directly related to the conduct of the
30 taxpayer’s trade or business located in a LAMBRA.

31 (ii) Who performs at least 50 percent of his or her services for
32 the taxpayer during the taxable year in a LAMBRA.

33 (C) Who is hired by the employer after the designation of the
34 area in which services were performed as a LAMBRA.

35 (7) “Seasonal employment” means employment by a qualified
36 taxpayer that has regular and predictable substantial reductions in
37 trade or business operations.

38 (8) “LAMBRA expiration date” means the date the LAMBRA
39 designation expires, is no longer binding, becomes inoperative, or
40 is repealed.

1 (c) For qualified disadvantaged individuals or qualified displaced
2 employees hired on or after January 1, 2001, the taxpayer shall do
3 both of the following:

4 (1) Obtain from the Employment Development Department, as
5 permitted by federal law, the local county or city Job Training
6 Partnership Act administrative entity, the local county GAIN office
7 or social services agency, or the local government administering
8 the LAMBRA, a certification that provides that a qualified
9 disadvantaged individual or qualified displaced employee meets
10 the eligibility requirements specified in subparagraph (C) of
11 paragraph (4) of subdivision (b) or subparagraph (A) of paragraph
12 (6) of subdivision (b). The Employment Development Department
13 may provide preliminary screening and referral to a certifying
14 agency. The Department of Housing and Community Development
15 shall develop regulations governing the issuance of certificates
16 pursuant to Section 7114.2 of the Government Code and shall
17 develop forms for this purpose.

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

20 (d) (1) For purposes of this section, both of the following apply:

21 (A) All employees of trades or businesses that are under
22 common control shall be treated as employed by a single employer.

23 (B) The credit (if any) allowable by this section with respect to
24 each trade or business shall be determined by reference to its
25 proportionate share of the qualified wages giving rise to the credit.

26 The regulations prescribed under this paragraph shall be based
27 on principles similar to the principles that apply in the case of
28 controlled groups of corporations as specified in subdivision (e)
29 of Section 23622.

30 (2) If an employer acquires the major portion of a trade or
31 business of another employer (hereinafter in this paragraph referred
32 to as the “predecessor”) or the major portion of a separate unit of
33 a trade or business of a predecessor, then, for purposes of applying
34 this section (other than subdivision (d)) for any calendar year
35 ending after that acquisition, the employment relationship between
36 an employee and an employer shall not be treated as terminated if
37 the employee continues to be employed in that trade or business.

38 (e) (1) (A) If the employment, other than seasonal employment,
39 of any employee, with respect to whom qualified wages are taken
40 into account under subdivision (a), is terminated by the taxpayer

1 at any time during the first 270 days of that employment (whether
2 or not consecutive) or before the close of the 270th calendar day
3 after the day in which that employee completes 90 days of
4 employment with the taxpayer, the tax imposed by this part for
5 the taxable year in which that employment is terminated shall be
6 increased by an amount (determined under those regulations) equal
7 to the credit allowed under subdivision (a) for that taxable year
8 and all prior taxable years attributable to qualified wages paid or
9 incurred with respect to that employee.

10 (B) If the seasonal employment of any qualified disadvantaged
11 individual, with respect to whom qualified wages are taken into
12 account under subdivision (a), is not continued by the qualified
13 taxpayer for a period of 270 days of employment during the
14 60-month period beginning with the day the qualified
15 disadvantaged individual commences seasonal employment with
16 the qualified taxpayer, the tax imposed by this part, for the taxable
17 year that includes the 60th month following the month in which
18 the qualified disadvantaged individual commences seasonal
19 employment with the qualified taxpayer, shall be increased by an
20 amount equal to the credit allowed under subdivision (a) for that
21 taxable year and all prior taxable years attributable to qualified
22 wages paid or incurred with respect to that qualified disadvantaged
23 individual.

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

26 (i) A termination of employment of an employee who voluntarily
27 leaves the employment of the taxpayer.

28 (ii) A termination of employment of an individual who, before
29 the close of the period referred to in subparagraph (A) of paragraph
30 (1), becomes disabled to perform the services of that employment,
31 unless that disability is removed before the close of that period
32 and the taxpayer fails to offer reemployment to that individual.

33 (iii) A termination of employment of an individual, if it is
34 determined that the termination was due to the misconduct (as
35 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
36 the California Code of Regulations) of that individual.

37 (iv) A termination of employment of an individual due to a
38 substantial reduction in the trade or business operations of the
39 taxpayer.

1 (v) A termination of employment of an individual, if that
2 individual is replaced by other qualified employees so as to create
3 a net increase in both the number of employees and the hours of
4 employment.

5 (B) Subparagraph (B) of paragraph (1) shall not apply to any
6 of the following:

7 (i) A failure to continue the seasonal employment of a qualified
8 disadvantaged individual who voluntarily fails to return to the
9 seasonal employment of the qualified taxpayer.

10 (ii) A failure to continue the seasonal employment of a qualified
11 disadvantaged individual who, before the close of the period
12 referred to in subparagraph (B) of paragraph (1), becomes disabled
13 and unable to perform the services of that seasonal employment,
14 unless that disability is removed before the close of that period
15 and the qualified taxpayer fails to offer seasonal employment to
16 that individual.

17 (iii) A failure to continue the seasonal employment of a qualified
18 disadvantaged individual, if it is determined that the failure to
19 continue the seasonal employment was due to the misconduct (as
20 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
21 the California Code of Regulations) of that qualified disadvantaged
22 individual.

23 (iv) A failure to continue seasonal employment of a qualified
24 disadvantaged individual due to a substantial reduction in the
25 regular seasonal trade or business operations of the qualified
26 taxpayer.

27 (v) A failure to continue the seasonal employment of a qualified
28 disadvantaged individual, if that individual is replaced by other
29 qualified displaced employees so as to create a net increase in both
30 the number of seasonal employees and the hours of seasonal
31 employment.

32 (C) For purposes of paragraph (1), the employment relationship
33 between the taxpayer and an employee shall not be treated as
34 terminated by reason of a mere change in the form of conducting
35 the trade or business of the taxpayer, if the employee continues to
36 be employed in that trade or business and the taxpayer retains a
37 substantial interest in that trade or business.

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

1 (4) At the close of the second taxable year, if the taxpayer has
2 not increased the number of its employees as determined by
3 paragraph (5) of subdivision (b), then the amount of the credit
4 previously claimed shall be added to the taxpayer's net tax for the
5 taxpayer's second taxable year.

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

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

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

13 (g) The credit shall be reduced by the credit allowed under
14 Section 17053.7. The credit shall also be reduced by the federal
15 credit allowed under Section 51 of the Internal Revenue Code.

16 In addition, any deduction otherwise allowed under this part for
17 the wages or salaries paid or incurred by the taxpayer upon which
18 the credit is based shall be reduced by the amount of the credit,
19 prior to any reduction required by subdivision (h) or (i).

20 (h) In the case where the credit otherwise allowed under this
21 section exceeds the "net tax" for the taxable year, that portion of
22 the credit that exceeds the "net tax" may be carried over and added
23 to the credit, if any, in the succeeding 10 taxable years, if necessary,
24 until the credit is exhausted. The credit shall be applied first to the
25 earliest taxable years possible.

26 (i) (1) The amount of credit otherwise allowed under this section
27 and Section 17053.45, including prior year credit carryovers, that
28 may reduce the "net tax" for the taxable year shall not exceed the
29 amount of tax that would be imposed on the taxpayer's business
30 income attributed to a LAMBRA determined as if that attributed
31 income represented all of the net income of the taxpayer subject
32 to tax under this part.

33 (2) Attributable income shall be that portion of the taxpayer's
34 California source business income that is apportioned to the
35 LAMBRA. For that purpose, the taxpayer's business income that
36 is attributable to sources in this state first shall be determined in
37 accordance with Chapter 17 (commencing with Section 25101) of
38 Part 11. That business income shall be further apportioned to the
39 LAMBRA in accordance with Article 2 (commencing with Section

1 25120) of Chapter 17 of Part 11, modified for purposes of this
2 section in accordance with paragraph (3).

3 (3) Income shall be apportioned to a LAMBRA by multiplying
4 the total California business income of the taxpayer by a fraction,
5 the numerator of which is the property factor plus the payroll factor,
6 and the denominator of which is two. For purposes of this
7 paragraph:

8 (A) The property factor is a fraction, the numerator of which is
9 the average value of the taxpayer's real and tangible personal
10 property owned or rented and used in the LAMBRA during the
11 taxable year, and the denominator of which is the average value
12 of all the taxpayer's real and tangible personal property owned or
13 rented and used in this state during the taxable year.

14 (B) The payroll factor is a fraction, the numerator of which is
15 the total amount paid by the taxpayer in the LAMBRA during the
16 taxable year for compensation, and the denominator of which is
17 the total compensation paid by the taxpayer in this state during the
18 taxable year.

19 (4) The portion of any credit remaining, if any, after application
20 of this subdivision, shall be carried over to succeeding taxable
21 years, if necessary, until the credit is exhausted, as if it were an
22 amount exceeding the "net tax" for the taxable year, as provided
23 in subdivision (h). However, the portion of any credit remaining
24 for carryover to taxable years beginning on or after January 1,
25 2014, if any, after application of this subdivision, shall be carried
26 over only to the succeeding 10 taxable years if necessary, until the
27 credit is exhausted, as if it were an amount exceeding the "net tax"
28 for the taxable year, as provided in subdivision (h).

29 (j) If the taxpayer is allowed a credit pursuant to this section for
30 qualified wages paid or incurred, only one credit shall be allowed
31 to the taxpayer under this part with respect to any wage consisting
32 in whole or in part of those qualified wages.

33 (k) (1) Except as provided in paragraph (2), this section shall
34 cease to be operative ~~for taxable years beginning on or after~~ on
35 January 1, 2014, and shall be repealed on December 1, 2019. *A*
36 *credit shall not be allowed under this section with respect to an*
37 *employee who first commences employment with a qualified*
38 *taxpayer on or after January 1, 2014.*

39 (2) ~~The~~ *This* section shall continue to apply with respect to
40 qualified *disadvantaged individuals or qualified displaced*

1 employees who are employed by the qualified taxpayer within the
2 LAMBRA within the 60-month period immediately preceding
3 January 1, 2014, and qualified wages paid or incurred with respect
4 to those qualified *disadvantaged individuals or qualified displaced*
5 employees shall continue to qualify for the credit under this section
6 for taxable years beginning on or after January 1, 2014, in
7 accordance with this section, as amended by the act adding this
8 subdivision.

9 *SEC. 3. Section 17053.74 of the Revenue and Taxation Code*
10 *is amended to read:*

11 17053.74. (a) There shall be allowed a credit against the “net
12 tax” (as defined in Section 17039) to a taxpayer who employs a
13 qualified employee in an enterprise zone during the taxable year.
14 The credit shall be equal to the sum of each of the following:

15 (1) Fifty percent of qualified wages in the first year of
16 employment.

17 (2) Forty percent of qualified wages in the second year of
18 employment.

19 (3) Thirty percent of qualified wages in the third year of
20 employment.

21 (4) Twenty percent of qualified wages in the fourth year of
22 employment.

23 (5) Ten percent of qualified wages in the fifth year of
24 employment.

25 (b) For purposes of this section:

26 (1) “Qualified wages” means:

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

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

38 (B) Wages received during the 60-month period beginning with
39 the first day the employee commences employment with the
40 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 (2) “Minimum wage” means the wage established by the
14 Industrial Welfare Commission as provided for in Chapter 1
15 (commencing with Section 1171) of Part 4 of Division 2 of the
16 Labor Code.

17 (3) “Zone expiration date” means the date the enterprise zone
18 designation expires, is no longer binding, becomes inoperative, or
19 is repealed.

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

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

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

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

29 (iv) Is any of the following:

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

37 (II) Immediately preceding the qualified employee’s
38 commencement of employment with the taxpayer, was a person
39 eligible to be a voluntary or mandatory registrant under the Greater
40 Avenues for Independence Act of 1985 (GAIN) provided for

1 pursuant to Article 3.2 (commencing with Section 11320) of
2 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
3 Code, or its successor.

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

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

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

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

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

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

28 (ee) Was a civilian employee of the Department of Defense
29 employed at a military installation being closed or realigned under
30 the Defense Base Closure and Realignment Act of 1990.

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

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

38 (hh) Has been terminated or laid off, or has received a notice
39 of termination or layoff, as a consequence of compliance with the
40 Clean Air Act.

- 1 (V) Immediately preceding the qualified employee's
 2 commencement of employment with the taxpayer, was a disabled
 3 individual who is eligible for or enrolled in, or has completed a
 4 state rehabilitation plan or is a service-connected disabled veteran,
 5 veteran of the Vietnam era, or veteran who is recently separated
 6 from military service.
- 7 (VI) Immediately preceding the qualified employee's
 8 commencement of employment with the taxpayer, was an
 9 ex-offender. An individual shall be treated as convicted if he or
 10 she was placed on probation by a state court without a finding of
 11 guilt.
- 12 (VII) Immediately preceding the qualified employee's
 13 commencement of employment with the taxpayer, was a person
 14 eligible for or a recipient of any of the following:
- 15 (aa) Federal Supplemental Security Income benefits.
 - 16 (bb) Aid to Families with Dependent Children.
 - 17 (cc) CalFresh benefits.
 - 18 (dd) State and local general assistance.
- 19 (VIII) Immediately preceding the qualified employee's
 20 commencement of employment with the taxpayer, was a member
 21 of a federally recognized Indian tribe, band, or other group of
 22 Native American descent.
- 23 (IX) Immediately preceding the qualified employee's
 24 commencement of employment with the taxpayer, was a resident
 25 of a targeted employment area, as defined in Section 7072 of the
 26 Government Code.
- 27 (X) An employee who qualified the taxpayer for the enterprise
 28 zone hiring credit under former Section 17053.8 or the program
 29 area hiring credit under former Section 17053.11.
- 30 (XI) Immediately preceding the qualified employee's
 31 commencement of employment with the taxpayer, was a member
 32 of a targeted group, as defined in Section 51(d) of the Internal
 33 Revenue Code, or its successor.
- 34 (B) Priority for employment shall be provided to an individual
 35 who is enrolled in a qualified program under the federal Job
 36 Training Partnership Act or the Greater Avenues for Independence
 37 Act of 1985 or who is eligible as a member of a targeted group
 38 under the Work Opportunity Tax Credit (Section 51 of the Internal
 39 Revenue Code), or its successor.

1 (5) “Taxpayer” means a person or entity engaged in a trade or
2 business within an enterprise zone designated pursuant to Chapter
3 12.8 (commencing with Section 7070) of the Government Code.

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

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

8 (1) Obtain from the Employment Development Department, as
9 permitted by federal law, the local county or city Job Training
10 Partnership Act administrative entity, the local county GAIN office
11 or social services agency, or the local government administering
12 the enterprise zone, a certification which provides that a qualified
13 employee meets the eligibility requirements specified in clause
14 (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The
15 Employment Development Department may provide preliminary
16 screening and referral to a certifying agency. The Employment
17 Development Department shall develop a form for this purpose.
18 The Department of Housing and Community Development shall
19 develop regulations governing the issuance of certificates by local
20 governments pursuant to subdivision (a) of Section 7086 of the
21 Government Code.

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

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

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

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

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

35 (2) If an employer acquires the major portion of a trade or
36 business of another employer (hereinafter in this paragraph referred
37 to as the “predecessor”) or the major portion of a separate unit of
38 a trade or business of a predecessor, then, for purposes of applying
39 this section (other than subdivision (e)) for any calendar year
40 ending after that acquisition, the employment relationship between

1 a qualified employee and an employer shall not be treated as
2 terminated if the employee continues to be employed in that trade
3 or business.

4 (e) (1) (A) If the employment, other than seasonal employment,
5 of any qualified employee, with respect to whom qualified wages
6 are taken into account under subdivision (a), is terminated by the
7 taxpayer at any time during the first 270 days of that employment
8 (whether or not consecutive) or before the close of the 270th
9 calendar day after the day in which that employee completes 90
10 days of employment with the taxpayer, the tax imposed by this
11 part for the taxable year in which that employment is terminated
12 shall be increased by an amount equal to the credit allowed under
13 subdivision (a) for that taxable year and all prior taxable years
14 attributable to qualified wages paid or incurred with respect to that
15 employee.

16 (B) If the seasonal employment of any qualified employee, with
17 respect to whom qualified wages are taken into account under
18 subdivision (a), is not continued by the taxpayer for a period of
19 270 days of employment during the 60-month period beginning
20 with the day the qualified employee commences seasonal
21 employment with the taxpayer, the tax imposed by this part, for
22 the taxable year that includes the 60th month following the month
23 in which the qualified employee commences seasonal employment
24 with the taxpayer, shall be increased by an amount equal to the
25 credit allowed under subdivision (a) for that taxable year and all
26 prior taxable years attributable to qualified wages paid or incurred
27 with respect to that qualified employee.

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

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

32 (ii) A termination of employment of a qualified employee who,
33 before the close of the period referred to in paragraph (1), becomes
34 disabled and unable to perform the services of that employment,
35 unless that disability is removed before the close of that period
36 and the taxpayer fails to offer reemployment to that employee.

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

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

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

8 (B) Subparagraph (B) of paragraph (1) shall not apply to any
9 of the following:

10 (i) A failure to continue the seasonal employment of a qualified
11 employee who voluntarily fails to return to the seasonal
12 employment of the taxpayer.

13 (ii) A failure to continue the seasonal employment of a qualified
14 employee who, before the close of the period referred to in
15 subparagraph (B) of paragraph (1), becomes disabled and unable
16 to perform the services of that seasonal employment, unless that
17 disability is removed before the close of that period and the
18 taxpayer fails to offer seasonal employment to that qualified
19 employee.

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

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

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

32 (C) For purposes of paragraph (1), the employment relationship
33 between the taxpayer and a qualified employee shall not be treated
34 as terminated by reason of a mere change in the form of conducting
35 the trade or business of the taxpayer, if the qualified employee
36 continues to be employed in that trade or business and the taxpayer
37 retains a substantial interest in that trade or business.

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

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

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

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

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

12 (h) The credit allowable under this section shall be reduced by
13 the credit allowed under Sections 17053.10, 17053.17, and
14 17053.46 claimed for the same employee. The credit shall also be
15 reduced by the federal credit allowed under Section 51 of the
16 Internal Revenue Code.

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

21 (i) In the case where the credit otherwise allowed under this
22 section exceeds the “net tax” for the taxable year, that portion of
23 the credit that exceeds the “net tax” may be carried over and added
24 to the credit, if any, in the succeeding 10 taxable years, if necessary,
25 until the credit is exhausted. The credit shall be applied first to the
26 earliest taxable years possible.

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

34 (2) Attributable income shall be that portion of the taxpayer’s
35 California source business income that is apportioned to the
36 enterprise zone. For that purpose, the taxpayer’s business income
37 attributable to sources in this state first shall be determined in
38 accordance with Chapter 17 (commencing with Section 25101) of
39 Part 11. That business income shall be further apportioned to the
40 enterprise zone in accordance with Article 2 (commencing with

1 Section 25120) of Chapter 17 of Part 11, modified for purposes
2 of this section in accordance with paragraph (3).

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

8 (A) The property factor is a fraction, the numerator of which is
9 the average value of the taxpayer's real and tangible personal
10 property owned or rented and used in the enterprise zone during
11 the taxable year, and the denominator of which is the average value
12 of all the taxpayer's real and tangible personal property owned or
13 rented and used in this state during the taxable year.

14 (B) The payroll factor is a fraction, the numerator of which is
15 the total amount paid by the taxpayer in the enterprise zone during
16 the taxable year for compensation, and the denominator of which
17 is the total compensation paid by the taxpayer in this state during
18 the taxable year.

19 (4) The portion of any credit remaining, if any, after application
20 of this subdivision, shall be carried over to succeeding taxable
21 years, if necessary, until the credit is exhausted, as if it were an
22 amount exceeding the "net tax" for the taxable year, as provided
23 in subdivision (i). However, the portion of any credit remaining
24 for carryover to taxable years beginning on or after January 1,
25 2014, if any, after application of this subdivision, shall be carried
26 over only to the succeeding 10 taxable years if necessary, until the
27 credit is exhausted, as if it were an amount exceeding the "net tax"
28 for the taxable year, as provided in subdivision (i).

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

32 (l) (1) Except as provided in paragraph (2), this section shall
33 cease to be operative ~~for taxable years beginning on or after~~ on
34 January 1, 2014, and shall be repealed on December 1, 2019. *A*
35 *credit shall not be allowed under this section with respect to an*
36 *employee who first commences employment with a taxpayer on or*
37 *after January 1, 2014.*

38 (2) ~~The~~ This section shall continue to apply with respect to
39 qualified employees who are employed by the ~~qualified~~ taxpayer
40 within the enterprise zone within the 60-month period immediately

1 preceding January 1, 2014, and qualified wages paid or incurred
 2 with respect to those qualified employees shall continue to qualify
 3 for the credit under this section for taxable years beginning on or
 4 after January 1, 2014, in accordance with this section, as amended
 5 by the act adding this subdivision.

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

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

- 12 (1) Fifty percent of qualified wages in the first year of
 13 employment.
- 14 (2) Forty percent of qualified wages in the second year of
 15 employment.
- 16 (3) Thirty percent of qualified wages in the third year of
 17 employment.
- 18 (4) Twenty percent of qualified wages in the fourth year of
 19 employment.
- 20 (5) Ten percent of qualified wages in the fifth year of
 21 employment.

22 (b) For purposes of this section:

23 (1) “Qualified wages” means:

- 24 (A) (i) Except as provided in clause (ii), that portion of wages
 25 paid or incurred by the taxpayer during the taxable year to qualified
 26 employees that does not exceed 150 percent of the minimum wage.
 27 (ii) For up to 1,350 qualified employees who are employed by
 28 the taxpayer in the Long Beach Enterprise Zone in aircraft
 29 manufacturing activities described in Codes 3721 to 3728,
 30 inclusive, and Code 3812 of the Standard Industrial Classification
 31 (SIC) Manual published by the United States Office of
 32 Management and Budget, 1987 edition, “qualified wages” means
 33 that portion of hourly wages that does not exceed 202 percent of
 34 the minimum wage.

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

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

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

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

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 Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving,
31 or is eligible to receive, subsidized employment, training, or
32 services funded by the federal Job Training Partnership Act, or its
33 successor.

34 (II) Immediately preceding the qualified employee’s
35 commencement of employment with the taxpayer, was a person
36 eligible to be a voluntary or mandatory registrant under the Greater
37 Avenues for Independence Act of 1985 (GAIN) provided for
38 pursuant to Article 3.2 (commencing with Section 11320) of
39 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
40 Code, or its successor.

- 1 (III) Immediately preceding the qualified employee's
 2 commencement of employment with the taxpayer, was an
 3 economically disadvantaged individual 14 years of age or older.
- 4 (IV) Immediately preceding the qualified employee's
 5 commencement of employment with the taxpayer, was a dislocated
 6 worker who meets any of the following:
- 7 (aa) Has been terminated or laid off or who has received a notice
 8 of termination or layoff from employment, is eligible for or has
 9 exhausted entitlement to unemployment insurance benefits, and
 10 is unlikely to return to his or her previous industry or occupation.
- 11 (bb) Has been terminated or has received a notice of termination
 12 of employment as a result of any permanent closure or any
 13 substantial layoff at a plant, facility, or enterprise, including an
 14 individual who has not received written notification but whose
 15 employer has made a public announcement of the closure or layoff.
- 16 (cc) Is long-term unemployed and has limited opportunities for
 17 employment or reemployment in the same or a similar occupation
 18 in the area in which the individual resides, including an individual
 19 55 years of age or older who may have substantial barriers to
 20 employment by reason of age.
- 21 (dd) Was self-employed (including farmers and ranchers) and
 22 is unemployed as a result of general economic conditions in the
 23 community in which he or she resides or because of natural
 24 disasters.
- 25 (ee) Was a civilian employee of the Department of Defense
 26 employed at a military installation being closed or realigned under
 27 the Defense Base Closure and Realignment Act of 1990.
- 28 (ff) Was an active member of the armed forces or National
 29 Guard as of September 30, 1990, and was either involuntarily
 30 separated or separated pursuant to a special benefits program.
- 31 (gg) Is a seasonal or migrant worker who experiences chronic
 32 seasonal unemployment and underemployment in the agriculture
 33 industry, aggravated by continual advancements in technology and
 34 mechanization.
- 35 (hh) Has been terminated or laid off, or has received a notice
 36 of termination or layoff, as a consequence of compliance with the
 37 Clean Air Act.
- 38 (V) Immediately preceding the qualified employee's
 39 commencement of employment with the taxpayer, was a disabled
 40 individual who is eligible for or enrolled in, or has completed a

1 state rehabilitation plan or is a service-connected disabled veteran,
2 veteran of the Vietnam era, or veteran who is recently separated
3 from military service.

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

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

12 (aa) Federal Supplemental Security Income benefits.

13 (bb) Aid to Families with Dependent Children.

14 (cc) CalFresh benefits.

15 (dd) State and local general assistance.

16 (VIII) Immediately preceding the qualified employee's
17 commencement of employment with the taxpayer, was a member
18 of a federally recognized Indian tribe, band, or other group of
19 Native American descent.

20 (IX) Immediately preceding the qualified employee's
21 commencement of employment with the taxpayer, was a resident
22 of a targeted employment area (as defined in Section 7072 of the
23 Government Code).

24 (X) An employee who qualified the taxpayer for the enterprise
25 zone hiring credit under former Section 23622 or the program area
26 hiring credit under former Section 23623.

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

31 (B) Priority for employment shall be provided to an individual
32 who is enrolled in a qualified program under the federal Job
33 Training Partnership Act or the Greater Avenues for Independence
34 Act of 1985 or who is eligible as a member of a targeted group
35 under the Work Opportunity Tax Credit (Section 51 of the Internal
36 Revenue Code), or its successor.

37 (5) "Taxpayer" means a corporation engaged in a trade or
38 business within an enterprise zone designated pursuant to Chapter
39 12.8 (commencing with Section 7070) of Division 7 of Title 1 of
40 the Government Code.

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

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

5 (1) Obtain from the Employment Development Department, as
6 permitted by federal law, the local county or city Job Training
7 Partnership Act administrative entity, the local county GAIN office
8 or social services agency, or the local government administering
9 the enterprise zone, a certification that provides that a qualified
10 employee meets the eligibility requirements specified in clause
11 (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The
12 Employment Development Department may provide preliminary
13 screening and referral to a certifying agency. The Employment
14 Development Department shall develop a form for this purpose.
15 The Department of Housing and Community Development shall
16 develop regulations governing the issuance of certificates by local
17 governments pursuant to subdivision (a) of Section 7086 of the
18 Government Code.

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

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

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

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

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

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

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

38 (2) If an employer acquires the major portion of a trade or
39 business of another employer (hereinafter in this paragraph referred
40 to as the “predecessor”) or the major portion of a separate unit of

1 a trade or business of a predecessor, then, for purposes of applying
2 this section (other than subdivision (e)) for any calendar year
3 ending after that acquisition, the employment relationship between
4 a qualified employee and an employer shall not be treated as
5 terminated if the employee continues to be employed in that trade
6 or business.

7 (e) (1) (A) If the employment, other than seasonal employment,
8 of any qualified employee with respect to whom qualified wages
9 are taken into account under subdivision (a) is terminated by the
10 taxpayer at any time during the first 270 days of that employment,
11 whether or not consecutive, or before the close of the 270th
12 calendar day after the day in which that employee completes 90
13 days of employment with the taxpayer, the tax imposed by this
14 part for the taxable year in which that employment is terminated
15 shall be increased by an amount equal to the credit allowed under
16 subdivision (a) for that taxable year and all prior taxable years
17 attributable to qualified wages paid or incurred with respect to that
18 employee.

19 (B) If the seasonal employment of any qualified employee, with
20 respect to whom qualified wages are taken into account under
21 subdivision (a) is not continued by the taxpayer for a period of
22 270 days of employment during the 60-month period beginning
23 with the day the qualified employee commences seasonal
24 employment with the taxpayer, the tax imposed by this part, for
25 the taxable year that includes the 60th month following the month
26 in which the qualified employee commences seasonal employment
27 with the taxpayer, shall be increased by an amount equal to the
28 credit allowed under subdivision (a) for that taxable year and all
29 prior taxable years attributable to qualified wages paid or incurred
30 with respect to that qualified employee.

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

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

35 (ii) A termination of employment of a qualified employee who,
36 before the close of the period referred to in subparagraph (A) of
37 paragraph (1), becomes disabled and unable to perform the services
38 of that employment, unless that disability is removed before the
39 close of that period and the taxpayer fails to offer reemployment
40 to that employee.

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

5 (iv) A termination of employment of a qualified employee due
6 to a substantial reduction in the trade or business operations of the
7 taxpayer.

8 (v) A termination of employment of a qualified employee, if
9 that employee is replaced by other qualified employees so as to
10 create a net increase in both the number of employees and the
11 hours of employment.

12 (B) Subparagraph (B) of paragraph (1) shall not apply to any
13 of the following:

14 (i) A failure to continue the seasonal employment of a qualified
15 employee who voluntarily fails to return to the seasonal
16 employment of the taxpayer.

17 (ii) A failure to continue the seasonal employment of a qualified
18 employee who, before the close of the period referred to in
19 subparagraph (B) of paragraph (1), becomes disabled and unable
20 to perform the services of that seasonal employment, unless that
21 disability is removed before the close of that period and the
22 taxpayer fails to offer seasonal employment to that qualified
23 employee.

24 (iii) A failure to continue the seasonal employment of a qualified
25 employee, if it is determined that the failure to continue the
26 seasonal employment was due to the misconduct (as defined in
27 Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California
28 Code of Regulations) of that qualified employee.

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

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

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

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

4 (ii) By reason of a mere change in the form of conducting the
5 trade or business of the taxpayer, if the qualified employee
6 continues to be employed in that trade or business and the taxpayer
7 retains a substantial interest in that trade or business.

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

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

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

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

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

21 (h) The credit allowable under this section shall be reduced by
22 the credit allowed under Sections 23623.5, 23625, and 23646
23 claimed for the same employee. The credit shall also be reduced
24 by the federal credit allowed under Section 51 of the Internal
25 Revenue Code.

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

30 (i) In the case where the credit otherwise allowed under this
31 section exceeds the “tax” for the taxable year, that portion of the
32 credit that exceeds the “tax” may be carried over and added to the
33 credit, if any, in the succeeding 10 taxable years, if necessary, until
34 the credit is exhausted. The credit shall be applied first to the
35 earliest taxable years possible.

36 (j) (1) The amount of the credit otherwise allowed under this
37 section and Section 23612.2, including any credit carryover from
38 prior years, that may reduce the “tax” for the taxable year shall
39 not exceed the amount of tax which would be imposed on the
40 taxpayer’s business income attributable to the enterprise zone

1 determined as if that attributable income represented all of the
2 income of the taxpayer subject to tax under this part.

3 (2) Attributable income shall be that portion of the taxpayer's
4 California source business income that is apportioned to the
5 enterprise zone. For that purpose, the taxpayer's business
6 attributable to sources in this state first shall be determined in
7 accordance with Chapter 17 (commencing with Section 25101).
8 That business income shall be further apportioned to the enterprise
9 zone in accordance with Article 2 (commencing with Section
10 25120) of Chapter 17, modified for purposes of this section in
11 accordance with paragraph (3).

12 (3) Business income shall be apportioned to the enterprise zone
13 by multiplying the total California business income of the taxpayer
14 by a fraction, the numerator of which is the property factor plus
15 the payroll factor, and the denominator of which is two. For
16 purposes of this paragraph:

17 (A) The property factor is a fraction, the numerator of which is
18 the average value of the taxpayer's real and tangible personal
19 property owned or rented and used in the enterprise zone during
20 the income year, and the denominator of which is the average value
21 of all the taxpayer's real and tangible personal property owned or
22 rented and used in this state during the income year.

23 (B) The payroll factor is a fraction, the numerator of which is
24 the total amount paid by the taxpayer in the enterprise zone during
25 the income year for compensation, and the denominator of which
26 is the total compensation paid by the taxpayer in this state during
27 the income year.

28 (4) The portion of any credit remaining, if any, after application
29 of this subdivision, shall be carried over to succeeding taxable
30 years, if necessary, until the credit is exhausted, as if it were an
31 amount exceeding the "tax" for the taxable year, as provided in
32 subdivision (i). However, the portion of any credit remaining for
33 carryover to taxable years beginning on or after January 1, 2014,
34 if any, after application of this subdivision, shall be carried over
35 only to the succeeding 10 taxable years if necessary, until the credit
36 is exhausted, as if it were an amount exceeding the "tax" for the
37 taxable year, as provided in subdivision (i).

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

1 (l) (1) Except as provided in paragraph (2), this section shall
2 cease to be operative ~~for taxable years beginning on or after~~ on
3 January 1, 2014, and shall be repealed on December 1, 2019. A
4 *credit shall not be allowed under this section with respect to an*
5 *employee who first commences employment with a taxpayer on or*
6 *after January 1, 2014.*

7 (2) ~~The~~ This section shall continue to apply with respect to
8 qualified employees who are employed by the ~~qualified~~ taxpayer
9 within the enterprise zone within the 60-month period immediately
10 preceding January 1, 2014, and qualified wages paid or incurred
11 with respect to those qualified employees shall continue to qualify
12 for the credit under this section for taxable years beginning on or
13 after January 1, 2014, in accordance with this section, as amended
14 by the act adding this subdivision.

15 *SEC. 5. Section 23646 of the Revenue and Taxation Code is*
16 *amended to read:*

17 23646. (a) For each taxable year beginning on or after January
18 1, 1995, there shall be allowed as a credit against the “tax” (as
19 defined in Section 23036) to a qualified taxpayer for hiring a
20 qualified disadvantaged individual or a qualified displaced
21 employee during the taxable year for employment in the LAMBRA.
22 The credit shall be equal to the sum of each of the following:

23 (1) Fifty percent of the qualified wages in the first year of
24 employment.

25 (2) Forty percent of the qualified wages in the second year of
26 employment.

27 (3) Thirty percent of the qualified wages in the third year of
28 employment.

29 (4) Twenty percent of the qualified wages in the fourth year of
30 employment.

31 (5) Ten percent of the qualified wages in the fifth year of
32 employment.

33 (b) For purposes of this section:

34 (1) “Qualified wages” means:

35 (A) That portion of wages paid or incurred by the employer
36 during the taxable year to qualified disadvantaged individuals or
37 qualified displaced employees that does not exceed 150 percent
38 of the minimum wage.

39 (B) The total amount of qualified wages which may be taken
40 into account for purposes of claiming the credit allowed under this

1 section shall not exceed two million dollars (\$2,000,000) per
2 taxable year.

3 (C) Wages received during the 60-month period beginning with
4 the first day the individual commences employment with the
5 taxpayer. Reemployment in connection with any increase, including
6 a regularly occurring seasonal increase, in the trade or business
7 operation of the qualified taxpayer does not constitute
8 commencement of employment for purposes of this section.

9 (D) Qualified wages do not include any wages paid or incurred
10 by the qualified taxpayer on or after the LAMBRA expiration date.
11 However, wages paid or incurred with respect to qualified
12 disadvantaged individuals or qualified displaced employees who
13 are employed by the qualified taxpayer within the LAMBRA within
14 the 60-month period prior to the LAMBRA expiration date shall
15 continue to qualify for the credit under this section after the
16 LAMBRA expiration date, in accordance with all provisions of
17 this section applied as if the LAMBRA designation were still in
18 existence and binding.

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

23 (3) “LAMBRA” means a local agency military base recovery
24 area designated in accordance with the provisions of Section 7114
25 of the Government Code.

26 (4) “Qualified disadvantaged individual” means an individual
27 who satisfies all of the following requirements:

28 (A) (i) At least 90 percent of whose services for the taxpayer
29 during the taxable year are directly related to the conduct of the
30 taxpayer’s trade or business located in a LAMBRA.

31 (ii) Who performs at least 50 percent of his or her services for
32 the taxpayer during the taxable year in the LAMBRA.

33 (B) Who is hired by the employer after the designation of the
34 area as a LAMBRA in which the individual’s services were
35 primarily performed.

36 (C) Who is any of the following immediately preceding the
37 individual’s commencement of employment with the taxpayer:

38 (i) An individual who has been determined eligible for services
39 under the federal Job Training Partnership Act (29 U.S.C. Sec.
40 1501 et seq.), or its successor.

1 (ii) Any voluntary or mandatory registrant under the Greater
2 Avenues for Independence Act of 1985 provided for pursuant to
3 Article 3.2 (commencing with Section 11320) of Chapter 2 of Part
4 3 of Division 9 of the Welfare and Institutions Code.

5 (iii) An economically disadvantaged individual 16 years of age
6 or older.

7 (iv) A dislocated worker who meets any of the following
8 conditions:

9 (I) 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 (II) 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 (III) 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 (IV) 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 (V) 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.

30 (VI) Was an active member of the Armed Forces or National
31 Guard as of September 30, 1990, and was either involuntarily
32 separated or separated pursuant to a special benefits program.

33 (VII) Experiences chronic seasonal unemployment and
34 underemployment in the agriculture industry, aggravated by
35 continual advancements in technology and mechanization.

36 (VIII) Has been terminated or laid off or has received a notice
37 of termination or layoff as a consequence of compliance with the
38 Clean Air Act.

39 (v) An individual who is enrolled in or has completed a state
40 rehabilitation plan or is a service-connected disabled veteran,

- 1 veteran of the Vietnam era, or veteran who is recently separated
2 from military service.
- 3 (vi) An ex-offender. An individual shall be treated as convicted
4 if he or she was placed on probation by a state court without a
5 finding of guilty.
- 6 (vii) A recipient of:
- 7 (I) Federal Supplemental Security Income benefits.
8 (II) Aid to Families with Dependent Children.
9 (III) CalFresh benefits.
10 (IV) State and local general assistance.
- 11 (viii) Is a member of a federally recognized Indian tribe, band,
12 or other group of Native American descent.
- 13 (5) “Qualified taxpayer” means a corporation that conducts a
14 trade or business within a LAMBRA and, for the first two taxable
15 years, has a net increase in jobs (defined as 2,000 paid hours per
16 employee per year) of one or more employees as determined below
17 in the LAMBRA.
- 18 (A) The net increase in the number of jobs shall be determined
19 by subtracting the total number of full-time employees (defined
20 as 2,000 paid hours per employee per year) the taxpayer employed
21 in this state in the taxable year prior to commencing business
22 operations in the LAMBRA from the total number of full-time
23 employees the taxpayer employed in this state during the second
24 taxable year after commencing business operations in the
25 LAMBRA. For taxpayers who commence doing business in this
26 state with their LAMBRA business operation, the number of
27 employees for the taxable year prior to commencing business
28 operations in the LAMBRA shall be zero. If the taxpayer has a net
29 increase in jobs in the state, the credit shall be allowed only if one
30 or more full-time employees is employed within the LAMBRA.
- 31 (B) The total number of employees employed in the LAMBRA
32 shall equal the sum of both of the following:
- 33 (i) The total number of hours worked in the LAMBRA for the
34 taxpayer by employees (not to exceed 2,000 hours per employee)
35 who are paid an hourly wage divided by 2,000.
- 36 (ii) The total number of months worked in the LAMBRA for
37 the taxpayer by employees who are salaried employees divided
38 by 12.
- 39 (C) In the case of a qualified taxpayer that first commences
40 doing business in the LAMBRA during the taxable year, for

1 purposes of clauses (i) and (ii), respectively, of subparagraph (B)
2 the divisors “2,000” and “12” shall be multiplied by a fraction, the
3 numerator of which is the number of months of the taxable year
4 that the taxpayer was doing business in the LAMBRA and the
5 denominator of which is 12.

6 (6) “Qualified displaced employee” means an individual who
7 satisfies all of the following requirements:

8 (A) Any civilian or military employee of a base or former base
9 that has been displaced as a result of a federal base closure act.

10 (B) (i) At least 90 percent of whose services for the taxpayer
11 during the taxable year are directly related to the conduct of the
12 taxpayer’s trade or business located in a LAMBRA.

13 (ii) Who performs at least 50 percent of his or her services for
14 the taxpayer during the taxable year in a LAMBRA.

15 (C) Who is hired by the employer after the designation of the
16 area in which services were performed as a LAMBRA.

17 (7) “Seasonal employment” means employment by a qualified
18 taxpayer that has regular and predictable substantial reductions in
19 trade or business operations.

20 (8) “LAMBRA expiration date” means the date the LAMBRA
21 designation expires, is no longer binding, becomes inoperative, or
22 is repealed.

23 (c) For qualified disadvantaged individuals or qualified displaced
24 employees hired on or after January 1, 2001, the taxpayer shall do
25 both of the following:

26 (1) Obtain from the Employment Development Department, as
27 permitted by federal law, the administrative entity of the local
28 county or city for the federal Job Training Partnership Act, or its
29 successor, the local county GAIN office or social services agency,
30 or the local government administering the LAMBRA, a
31 certification that provides that a qualified disadvantaged individual
32 or qualified displaced employee meets the eligibility requirements
33 specified in subparagraph (C) of paragraph (4) of subdivision (b)
34 or subparagraph (A) of paragraph (6) of subdivision (b). The
35 Employment Development Department may provide preliminary
36 screening and referral to a certifying agency. The Department of
37 Housing and Community Development shall develop regulations
38 governing the issuance of certificates pursuant to Section 7114.2
39 of the Government Code and shall develop forms for this purpose.

1 (2) Retain a copy of the certification and provide it upon request
2 to the Franchise Tax Board.
3 (d) (1) For purposes of this section, both of the following apply:
4 (A) All employees of all corporations that are members of the
5 same controlled group of corporations shall be treated as employed
6 by a single employer.
7 (B) The credit (if any) allowable by this section to each member
8 shall be determined by reference to its proportionate share of the
9 qualified wages giving rise to the credit.
10 (2) For purposes of this subdivision, “controlled group of
11 corporations” has the meaning given to that term by Section
12 1563(a) of the Internal Revenue Code, except that both of the
13 following apply:
14 (A) “More than 50 percent” shall be substituted for “at least 80
15 percent” each place it appears in Section 1563(a)(1) of the Internal
16 Revenue Code.
17 (B) The determination shall be made without regard to Section
18 1563(a)(4) and Section 1563(e)(3)(C) of the Internal Revenue
19 Code.
20 (3) If an employer acquires the major portion of a trade or
21 business of another employer (hereinafter in this paragraph referred
22 to as the “predecessor”) or the major portion of a separate unit of
23 a trade or business of a predecessor, then, for purposes of applying
24 this section (other than subdivision (e)) for any calendar year
25 ending after that acquisition, the employment relationship between
26 an employee and an employer shall not be treated as terminated if
27 the employee continues to be employed in that trade or business.
28 (e) (1) (A) If the employment of any employee, other than
29 seasonal employment, with respect to whom qualified wages are
30 taken into account under subdivision (a) is terminated by the
31 taxpayer at any time during the first 270 days of that employment
32 (whether or not consecutive) or before the close of the 270th
33 calendar day after the day in which that employee completes 90
34 days of employment with the taxpayer, the tax imposed by this
35 part for the taxable year in which that employment is terminated
36 shall be increased by an amount equal to the credit allowed under
37 subdivision (a) for that taxable year and all prior income years
38 attributable to qualified wages paid or incurred with respect to that
39 employee.

1 (B) If the seasonal employment of any qualified disadvantaged
2 individual, with respect to whom qualified wages are taken into
3 account under subdivision (a) is not continued by the qualified
4 taxpayer for a period of 270 days of employment during the
5 60-month period beginning with the day the qualified
6 disadvantaged individual commences seasonal employment with
7 the qualified taxpayer, the tax imposed by this part, for the taxable
8 year that includes the 60th month following the month in which
9 the qualified disadvantaged individual commences seasonal
10 employment with the qualified taxpayer, shall be increased by an
11 amount equal to the credit allowed under subdivision (a) for that
12 taxable year and all prior taxable years attributable to qualified
13 wages paid or incurred with respect to that qualified disadvantaged
14 individual.

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

17 (i) A termination of employment of an employee who voluntarily
18 leaves the employment of the taxpayer.

19 (ii) A termination of employment of an individual who, before
20 the close of the period referred to in paragraph (1), becomes
21 disabled to perform the services of that employment, unless that
22 disability is removed before the close of that period and the
23 taxpayer fails to offer reemployment to that individual.

24 (iii) A termination of employment of an individual, if it is
25 determined that the termination was due to the misconduct (as
26 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
27 the California Code of Regulations) of that individual.

28 (iv) A termination of employment of an individual due to a
29 substantial reduction in the trade or business operations of the
30 taxpayer.

31 (v) A termination of employment of an individual, if that
32 individual is replaced by other qualified employees so as to create
33 a net increase in both the number of employees and the hours of
34 employment.

35 (B) Subparagraph (B) of paragraph (1) shall not apply to any
36 of the following:

37 (i) A failure to continue the seasonal employment of a qualified
38 disadvantaged individual who voluntarily fails to return to the
39 seasonal employment of the qualified taxpayer.

1 (ii) A failure to continue the seasonal employment of a qualified
2 disadvantaged individual who, before the close of the period
3 referred to in subparagraph (B) of paragraph (1), becomes disabled
4 and unable to perform the services of that seasonal employment,
5 unless that disability is removed before the close of that period
6 and the qualified taxpayer fails to offer seasonal employment to
7 that qualified disadvantaged individual.

8 (iii) A failure to continue the seasonal employment of a qualified
9 disadvantaged individual, if it is determined that the failure to
10 continue the seasonal employment was due to the misconduct (as
11 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
12 the California Code of Regulations) of that individual.

13 (iv) A failure to continue seasonal employment of a qualified
14 disadvantaged individual due to a substantial reduction in the
15 regular seasonal trade or business operations of the qualified
16 taxpayer.

17 (v) A failure to continue the seasonal employment of a qualified
18 disadvantaged individual, if that individual is replaced by other
19 qualified disadvantaged individuals so as to create a net increase
20 in both the number of seasonal employees and the hours of seasonal
21 employment.

22 (C) For purposes of paragraph (1), the employment relationship
23 between the taxpayer and an employee shall not be treated as
24 terminated by either of the following:

25 (i) A transaction to which Section 381(a) of the Internal Revenue
26 Code applies, if the employee continues to be employed by the
27 acquiring corporation.

28 (ii) A mere change in the form of conducting the trade or
29 business of the taxpayer, if the employee continues to be employed
30 in that trade or business and the taxpayer retains a substantial
31 interest in that trade or business.

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

35 (4) At the close of the second taxable year, if the taxpayer has
36 not increased the number of its employees as determined by
37 paragraph (5) of subdivision (b), then the amount of the credit
38 previously claimed shall be added to the taxpayer's tax for the
39 taxpayer's second taxable year.

1 (f) In the case of an organization to which Section 593 of the
2 Internal Revenue Code applies, and a regulated investment
3 company or a real estate investment trust subject to taxation under
4 this part, rules similar to the rules provided in Section 46(e) and
5 Section 46(h) of the Internal Revenue Code shall apply.

6 (g) The credit shall be reduced by the credit allowed under
7 Section 23621. The credit shall also be reduced by the federal
8 credit allowed under Section 51 of the Internal Revenue Code.

9 In addition, any deduction otherwise allowed under this part for
10 the wages or salaries paid or incurred by the taxpayer upon which
11 the credit is based shall be reduced by the amount of the credit,
12 prior to any reduction required by subdivision (h) or (i).

13 (h) In the case where the credit otherwise allowed under this
14 section exceeds the “tax” for the taxable year, that portion of the
15 credit that exceeds the “tax” may be carried over and added to the
16 credit, if any, in the succeeding 10 taxable years, if necessary, until
17 the credit is exhausted. The credit shall be applied first to the
18 earliest taxable years possible.

19 (i) (1) The amount of credit otherwise allowed under this section
20 and Section 23645, including any prior year carryovers, that may
21 reduce the “tax” for the taxable year shall not exceed the amount
22 of tax that would be imposed on the taxpayer’s business income
23 attributed to a LAMBRA determined as if that attributed income
24 represented all of the income of the taxpayer subject to tax under
25 this part.

26 (2) Attributable income shall be that portion of the taxpayer’s
27 California source business income that is apportioned to the
28 LAMBRA. For that purpose, the taxpayer’s business income that
29 is attributable to sources in this state first shall be determined in
30 accordance with Chapter 17 (commencing with Section 25101).
31 That business income shall be further apportioned to the LAMBRA
32 in accordance with Article 2 (commencing with Section 25120)
33 of Chapter 17, modified for purposes of this section in accordance
34 with paragraph (3).

35 (3) Income shall be apportioned to a LAMBRA by multiplying
36 the total California business income of the taxpayer by a fraction,
37 the numerator of which is the property factor plus the payroll factor,
38 and the denominator of which is two. For purposes of this
39 paragraph:

1 (A) The property factor is a fraction, the numerator of which is
2 the average value of the taxpayer's real and tangible personal
3 property owned or rented and used in the LAMBRA during the
4 taxable year, and the denominator of which is the average value
5 of all the taxpayer's real and tangible personal property owned or
6 rented and used in this state during the taxable year.

7 (B) The payroll factor is a fraction, the numerator of which is
8 the total amount paid by the taxpayer in the LAMBRA during the
9 taxable year for compensation, and the denominator of which is
10 the total compensation paid by the taxpayer in this state during the
11 taxable year.

12 (4) The portion of any credit remaining, if any, after application
13 of this subdivision, shall be carried over to succeeding taxable
14 years, if necessary, until the credit is exhausted, as if it were an
15 amount exceeding the "tax" for the taxable year, as provided in
16 subdivision (h). However, the portion of any credit remaining for
17 carryover to taxable years beginning on or after January 1, 2014,
18 if any, after application of this subdivision, shall be carried over
19 only to the succeeding 10 taxable years, if necessary, until the
20 credit is exhausted, as if it were an amount exceeding the "tax"
21 for the taxable year, as provided in subdivision (h).

22 (j) If the taxpayer is allowed a credit pursuant to this section for
23 qualified wages paid or incurred, only one credit shall be allowed
24 to the taxpayer under this part with respect to any wage consisting
25 in whole or in part of those qualified wages.

26 (k) (1) Except as provided in paragraph (2), this section shall
27 cease to be operative ~~for taxable years beginning on or after~~ on
28 January 1, 2014, and shall be repealed on December 1, 2019. *A*
29 *credit shall not be allowed under this section with respect to an*
30 *employee who first commences employment with a qualified*
31 *taxpayer on or after January 1, 2014.*

32 (2) ~~The~~ *This* section shall continue to apply with respect to
33 qualified *disadvantaged individuals or qualified displaced*
34 employees who are employed by the qualified taxpayer within the
35 LAMBRA within the 60-month period immediately preceding
36 January 1, 2014, and qualified wages paid or incurred with respect
37 to those qualified *disadvantaged individuals or qualified displaced*
38 employees shall continue to qualify for the credit under this section
39 for taxable years beginning on or after January 1, 2014, in

1 accordance with this section, as amended by the act adding this
2 subdivision.

3 *SEC. 6. Section 6 of Chapter 70 of the Statutes of 2013 is*
4 *amended to read:*

5 Sec. 6. (a) (1) For purposes of applying Sections 17053.33,
6 17053.34, 17053.45, 17053.46, 17053.47, 17053.70, 17053.74,
7 23612.2, 23622.7, 23622.8, 23633, 23634, 23645, and 23646 of
8 the Revenue and Taxation Code, as amended by Assembly Bill
9 93 of the 2013–14 Regular Session, the revision of the carryover
10 period of the credit under each of those sections to a period of 10
11 ~~years~~ *years, with the 10-year carryover period commencing with*
12 *the first taxable year beginning on or after January 1, 2014, applies*
13 *to credits under those sections and carryovers of credits under*
14 *those sections that are available for carryover to the taxable year*
15 *beginning on or after January 1, 2014. The carryover period for*
16 *hiring credits earned under Section 17053.34, 17053.46, 17053.47,*
17 *17053.74, 23622.7, 23622.8, 23634, and 23646 of the Revenue*
18 *and Taxation Code in taxable years beginning on or after January*
19 *1, 2014, is also 10 taxable years, beginning with the taxable year*
20 *after the taxable year the credit is earned.*

21 (2) Notwithstanding the repeal of Sections 17053.33, 17053.34,
22 17053.45, 17053.46, 17053.47, 17053.70, 17053.74, 23612.2,
23 23622.7, 23622.8, 23633, 23634, 23645, and 23646 of the Revenue
24 and Taxation Code by amendments made by Assembly Bill 93 of
25 the 2013–14 Regular Session, pursuant to subdivision (d) of Section
26 17039 of the Revenue and Taxation Code and subdivision (f) of
27 Section 23036 of the Revenue and Taxation Code, any remaining
28 carryover from a credit under those sections is allowed to be carried
29 over under the provisions of those sections as they read
30 immediately prior to the repeal.

31 (b) The Legislature finds and declares that, for purposes of
32 proper implementation of the amendments made by Assembly Bill
33 93 of the 2013–14 Regular Session to Sections 17053.33, 17053.34,
34 17053.45, 17053.46, 17053.47, 17053.70, 17053.74, 23612.2,
35 23622.7, 23622.8, 23633, 23634, 23645, and 23646 of the Revenue
36 and Taxation Code, this section does both of the following:

37 (1) Clarifies the changes made by Assembly Bill 93 of the
38 2013–14 Regular Session with respect to the carryover periods of
39 each of those provisions of the Revenue and Taxation Code.

1 (2) Reiterates the application of existing law regarding the
2 continuing availability of carryover credits after repeal of each of
3 those provisions of the Revenue and Taxation Code.

4 *SEC. 7. This act provides for a tax levy within the meaning of*
5 *Article IV of the Constitution and shall go into immediate effect.*

6
7
8
9
10
11

**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, September 5, 2013. (JR11)**