

AMENDED IN ASSEMBLY MAY 21, 2013

AMENDED IN ASSEMBLY APRIL 16, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 305**

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**Introduced by Assembly Member V. Manuel Pérez**  
**(Coauthors: Assembly Members Brown and, Fox, Harkey, and**  
***Nestande*)**

February 12, 2013

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An act to add and repeal Sections 17053.9 and 23622.9 of, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 305, as amended, V. Manuel Pérez. Income taxes: hiring credits: investment credits.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit in the amount of \$3,000 for each full-time employee hired by a qualified employer applicable to taxable years beginning on or after January 1, 2009, and ending upon a cut-off date calculated based upon an estimate by the Franchise Tax Board of claims cumulatively totaling \$400,000,000 for all taxable years, as specified. Existing law also creates the California Tax Credit Allocation Committee, which has specified duties in regard to low-income housing credits.

This bill would instead calculate the cut-off date for the above-described hiring credit based upon an estimate by the Franchise

Tax Board of claims cumulatively totaling \$200,000,000 for all taxable years, as specified.

This bill would also allow a credit under both laws, in modified conformity with a federal New Market Tax Credit, for taxable years beginning on or after January 1, 2013, and before January 1, 2020, in a specified amount for investments in low-income communities. The bill would limit the total annual amount of credit allowed pursuant to these provisions to \$40,000,000 and would limit the allocation of the credit to a cumulative total of no more than \$200,000,000. This bill would impose specified duties on the California Tax Credit Allocation Committee with regard to the application for, and allocation of, the credit. The bill would require the committee to establish and impose reasonable fees upon entities that apply for the allocation of the credit and use the revenue to defray the cost of administering the program, as specified, thereby making an appropriation. This bill would also appropriate \$150,000 from the Tax Credit Allocation Fee Account to the committee for purposes of implementing the tax credit.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
 State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California is entering the sixth year of the worst economic
- 4 recession since the Great Depression.
- 5 (b) Due to a systemic budget problem, the state is suffering from
- 6 chronic revenue shortfalls based in part on increasing reliance on
- 7 revenues from personal income tax rolls.
- 8 (c) Investment in small business ventures is a proven method
- 9 of stimulating economic activity, creating new jobs, and generating
- 10 revenue by expanding the tax base.
- 11 (d) The federal New Markets Tax Credit Program, created in
- 12 2000 with bipartisan support, has been an effective means of
- 13 stimulating state and regional economies due to its ability to

1 leverage federal funds to drive private investment in communities  
2 that would otherwise not have had access to capital. These  
3 investments accrue to small businesses, schools, and other  
4 business-related real estate projects.

5 (e) As of 2010, nine states, Connecticut, Florida, Illinois,  
6 Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Oklahoma,  
7 had enacted matching state programs. On average, these states  
8 successfully leveraged thirteen dollars (\$13) in federal New  
9 Markets Tax Credit for every dollar of state credits initially  
10 allocated for the state program.

11 (f) As of December 29, 2012, \$261,560,076 of California's  
12 small business hiring tax credit are still available.

13 (g) Given the current economic climate and the lack of use of  
14 the state hiring tax credit, it is reasonable for the Legislature to  
15 search for and consider other alternatives to stimulate hiring and  
16 to generate economic activity to shorten the current recession and  
17 promote permanent economic recovery through the creation of a  
18 California New Markets Tax Credit Program.

19 (h) There are low-income communities in the state that face  
20 multiple challenges in attracting private investment, including, but  
21 not limited to, developing and maintaining a workforce that meets  
22 the skill needs of local employers, an infrastructure that connects  
23 local businesses to external markets, and neighborhoods that are  
24 not disproportionately burdened with environmental pollutants,  
25 including air, soil, and water contamination.

26 (⊕)

27 (i) Given the ability of the California New Markets Tax Credit  
28 Program to stimulate private investment activity in areas that would  
29 otherwise not have access to investment capital, it is appropriate  
30 that the state consider prioritizing a portion of the California New  
31 Markets Tax Credit Program to encourage private investment in  
32 areas that face multiple challenges in attracting investment capital.

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

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

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

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

5 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (f) For purposes of this section:

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

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

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

5 (B) For purposes of this paragraph, the ~~cut-off~~ *cut-off* date shall  
6 be the last day of the calendar quarter within which the Franchise  
7 Tax Board estimates it will have received timely filed original  
8 returns claiming credits under this section and Section 23623 that  
9 cumulatively total two hundred million dollars (\$200,000,000) for  
10 all taxable years.

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

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

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

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

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

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

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

4 SEC. 4. Section 17053.9 is added to the Revenue and Taxation  
5 Code, to read:

6 17053.9. (a) There is hereby created the California New  
7 Markets Tax Credit Program as provided in this section and Section  
8 23622.9. The purpose of this program is to stimulate economic  
9 development, and hasten California's economic recovery, by  
10 authorizing tax credits for investment in California, including, but  
11 not limited to, retail businesses, real property, financial institutions,  
12 and schools. The California Tax Credit Allocation Committee shall  
13 have responsibility for the administration of this program as  
14 provided in this section and Section 23622.9.

15 (b) (1) For taxable years beginning on or after January 1, 2013,  
16 and before January 1, 2020, there shall be allowed as a credit  
17 against the "net tax," as defined in Section 17039, an amount  
18 determined in accordance with Section 45D of the Internal Revenue  
19 Code, as modified as set forth in this section.

20 (2) This credit shall be allowed only if the taxpayer holds the  
21 qualified equity investment on the credit allowance date and each  
22 of the six following anniversary dates of that date.

23 (c) Section 45D of the Internal Revenue Code is modified as  
24 follows:

25 (1) (A) The references to "the Secretary" in Section 45D of the  
26 Internal Revenue Code are modified to read "the committee."

27 (B) For purposes of this section, "committee" means the  
28 California Tax Credit Allocation Committee as described in  
29 subdivision (a) of Section 50199.7 of the Health and Safety Code,  
30 or any successor thereto.

31 (2) Section 45D(a)(2) of the Internal Revenue Code is modified  
32 by substituting for "(A) 5 percent with respect to the first 3 credit  
33 allowance dates, and (B) 6 percent with respect to the remainder  
34 of the credit allowance dates." with the following:

35 (A) Zero percent with respect to the first two credit allowance  
36 dates.

37 (B) Seven percent with respect to the third credit allowance  
38 date.

39 (C) Eight percent with respect to the remainder of the credit  
40 allowance dates.

1 (3) The provisions of Section 45D(b) of the Internal Revenue  
2 Code is modified as follows:

3 (A) Section 45D(b)(1) of the Internal Revenue Code is modified  
4 by substituting “1 year” for “5 years” and “1-year period” for  
5 “5-year period.”

6 (B) Section 45D(b)(3) of the Internal Revenue Code is modified  
7 by substituting “qualified low-income community investments in  
8 California” for “qualified low-income community investments.”

9 (4) Section 45D(d)(1)(A) of the Internal Revenue Code, relating  
10 to qualified low-income community investments, is modified to  
11 include any capital or equity investment in, or loan to, any real  
12 estate project *located in a low-income community* or any operating  
13 business that, at the time the initial investment is made, has 250  
14 or less employees and is located in a low-income community. The  
15 *real estate project* or operating business shall meet all other  
16 conditions of a qualified active low-income *community* business,  
17 except as modified by paragraphs (5) and (6).

18 (5) The term “qualified active low-income community business,”  
19 as defined in Section 45D(d)(2) of the Internal Revenue Code is  
20 modified as follows:

21 (A) Section 45D(d)(2)(A)(i) of the Internal Revenue Code is  
22 modified by substituting “any low-income community in  
23 California” for “any low-income community.”

24 (B) Section 45D(d)(2)(A)(ii) of the Internal Revenue Code is  
25 modified by substituting “any low-income community in  
26 California. ~~‘Substantial portion’ shall be defined as 40 percent or  
27 more of the tangible property of the entity~~” for “any low-income  
28 *community.*” *California.*”

29 (C) Section 45D(d)(2)(A)(iii) of the Internal Revenue Code  
30 shall not apply.

31 (D) The following shall apply in lieu of the provisions of Section  
32 45D(d)(2)(C) of the Internal Revenue Code, relating to qualified  
33 active low-income community business: “A ‘qualified active  
34 low-income community business’ shall include an operating  
35 business that, at the time the initial investment is made, has 250  
36 or less employees and is located in a low-income community. The  
37 operating business shall meet all other conditions of a qualified  
38 active low-income business, except as modified by this paragraph  
39 and paragraph (6).”

1 (6) Section 45D(e)(1) of the Internal Revenue Code is modified  
2 to add the following: When the United States Census Bureau  
3 discontinues using the decennial census to report median family  
4 income on a census tract basis, census block group data shall be  
5 used based on the American Community Survey.

6 (7) The following shall apply in lieu of the provisions of Section  
7 ~~45(D)(f)(1)~~ 45D(f)(1) of the Internal Revenue Code, relating to  
8 national limitation on amount of investments designated: “The  
9 aggregate amount of credit that may be ~~allowed~~ *allocated* in any  
10 calendar year pursuant to this section and Section 23622.9 shall  
11 be forty million dollars (\$40,000,000). The committee shall limit  
12 the allocation of credits permitted under this section and Section  
13 23622.9 to a cumulative total of no more than two hundred million  
14 dollars (\$200,000,000).”

15 (8) Section 45D(g)(3) of the Internal Revenue Code, relating  
16 to recapture event, is modified by adding the following:  
17 “Notwithstanding the provisions of this paragraph, a recapture  
18 event shall not have occurred and an investment shall be considered  
19 held by a community development entity upon its sale or  
20 repayment, provided the qualified community development entity  
21 reinvests an amount equal to the capital returned to or recovered  
22 by the qualified community development entity from the original  
23 investment, exclusive of any profits realized, in another qualified  
24 low-income community investment within 12 months of the receipt  
25 of that capital. A qualified community development entity shall  
26 not be required to reinvest capital returned from a qualified  
27 low-income community investment after the sixth anniversary of  
28 the issuance of the qualified equity investment, the proceeds of  
29 which were used to make the qualified low-income community  
30 investment, and the qualified low-income community investment  
31 shall be considered held by the qualified community development  
32 entity through the seventh anniversary of the issuance of the  
33 qualified equity investment.”

34 (9) Section 45D(i) of the Internal Revenue Code, relating to  
35 regulations, shall not apply.

36 (d) (1) The committee shall adopt guidelines necessary or  
37 appropriate to carry out the purposes of this section. The guidelines  
38 shall not disqualify a low-income community investment for the  
39 single reason that public or private incentives, loans, equity  
40 investments, technical assistance, or other forms of support have

1 been or continue to be provided. The adoption of the guidelines  
2 shall not be subject to the rulemaking provisions of the  
3 Administrative Procedure Act of Chapter 3.5 (commencing with  
4 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
5 Code.

6 (2) The committee shall establish and impose reasonable fees  
7 upon entities that apply for the allocation pursuant to subdivision  
8 (d) and use the revenue to defray the cost of administering the  
9 program. The committee shall establish the fees in a manner that  
10 ensures that (A) the total amount collected equals the amount  
11 reasonably necessary to defray the ~~commission's~~ *committee's* costs  
12 in performing its administrative duties under this section, and (B)  
13 the amount paid by each entity reasonably corresponds with the  
14 value of the services provided to the entity.

15 (3) In developing guidelines the committee shall adopt an  
16 allocation process that does all of the following:

17 (A) Creates an equitable distribution process that ensures that  
18 low-income communities across the state have an opportunity to  
19 benefit from the program.

20 (B) Sets minimum organizational capacity standards that  
21 applicants must meet in order to receive an allocation of credits.

22 (C) Requires annual reporting by each community development  
23 ~~organization~~ *entity* that receives an allocation. The report shall  
24 include, but is not limited to, the impact the credit had on the  
25 low-income community, the amount of moneys used, and the types  
26 of activities funded through the equity investment. The reporting  
27 period shall be for a period of eight years following the allocation  
28 of credits.

29 (D) Provides for an annual return of unused credits so that they  
30 may be reallocated to other community development entities.

31 (E) Requires the committee to annually reserve the following:

32 (i) At least 15 percent of the tax credits for community  
33 development entities that target businesses located in low-income  
34 communities facing disproportionate environmental pollution.

35 (ii) At least 15 percent of the tax credits for community  
36 development entities that target rural areas, including businesses  
37 providing equipment or supplies to agricultural producers, packers,  
38 handlers, and processors.

39 (iii) At least 20 percent of the tax credits for community  
40 development entities that target businesses in inner-city areas.

1 (4) The committee shall annually report on its Internet Web site  
2 the information provided by low-income community development  
3 entities and on the geographic distribution of the credits.

4 (e) This section shall remain in effect only until December 1,  
5 2020, and as of that date is repealed.

6 SEC. 5. Section 23622.9 is added to the Revenue and Taxation  
7 Code, to read:

8 23622.9. (a) There is hereby created the California New  
9 Markets Tax Credit Program as provided in this section and Section  
10 17053.9. The purpose of this program is to stimulate economic  
11 development, and hasten California's economic recovery, by  
12 authorizing tax credits for investment in California, including, but  
13 not limited to, retail businesses, real property, financial institutions,  
14 and schools. The California Tax Credit Allocation Committee shall  
15 have responsibility for the administration of this program as  
16 provided in this section and Section 17053.9.

17 (b) (1) For taxable years beginning on or after January 1, 2013,  
18 and before January 1, 2020, there shall be allowed as a credit  
19 against the "tax," as defined in Section 23036, an amount  
20 determined in accordance with Section 45D of the Internal Revenue  
21 Code, as modified as set forth in this section.

22 (2) This credit shall be allowed only if the taxpayer holds the  
23 qualified equity investment on the credit allowance date and each  
24 of the six following anniversary dates of that date.

25 (c) Section 45D of the Internal Revenue Code is modified as  
26 follows:

27 (1) (A) The references to "the Secretary" in Section 45D of the  
28 Internal Revenue Code are modified to read "the committee."

29 (B) For purposes of this section, "committee" means the  
30 California Tax Credit Allocation Committee as described in  
31 subdivision (a) of Section 50199.7 of the Health and Safety Code,  
32 or any successor thereto.

33 (2) Section 45D(a)(2) of the Internal Revenue Code is modified  
34 by substituting for "(A) 5 percent with respect to the first 3 credit  
35 allowance dates, and (B) 6 percent with respect to the remainder  
36 of the credit allowance dates." with the following:

37 (A) Zero percent with respect to the first two credit allowance  
38 dates.

39 (B) Seven percent with respect to the third credit allowance  
40 date.

1 (C) Eight percent with respect to the remainder of the credit  
2 allowance dates.

3 (3) The provisions of Section 45D(b) of the Internal Revenue  
4 Code is modified as follows:

5 (A) Section 45D(b)(1) of the Internal Revenue Code is modified  
6 by substituting “1 year” for “5 years” and “1-year period” for  
7 “5-year period.”

8 (B) Section 45D(b)(3) of the Internal Revenue Code is modified  
9 by substituting “qualified low-income community investments in  
10 California” for “qualified low-income community investments.”

11 (4) Section 45D(d)(1)(A) of the Internal Revenue Code, relating  
12 to qualified low-income community investments, is modified to  
13 include any capital or equity investment in, or loan to, any real  
14 estate project *located in a low-income community* or any operating  
15 business that, at the time the initial investment is made, has 250  
16 or less employees and is located in a low-income community. The  
17 *real estate project or* operating business shall meet all other  
18 conditions of a qualified active low-income *community* business,  
19 except as modified by paragraphs (5) and (6).

20 (5) The term “qualified active low-income community business,”  
21 as defined in Section 45D(d)(2) of the Internal Revenue Code is  
22 modified as follows:

23 (A) Section 45D(d)(2)(A)(i) of the Internal Revenue Code is  
24 modified by substituting “any low-income community in  
25 California” for “any low-income community.”

26 (B) Section 45D(d)(2)(A)(ii) of the Internal Revenue Code is  
27 modified by substituting “any low-income community in  
28 California. ~~‘Substantial portion’ shall be defined as 40 percent or  
29 more of the tangible property of the entity~~” for “any low-income  
30 ~~community.~~” *California.*”

31 (C) Section 45D(d)(2)(A)(iii) of the Internal Revenue Code  
32 shall not apply.

33 (D) The following shall apply in lieu of the provisions of Section  
34 45D(d)(2)(C) of the Internal Revenue Code, relating to qualified  
35 active low-income community business: “A ‘qualified active  
36 low-income community business’ shall include an operating  
37 business that, at the time the initial investment is made, has 250  
38 or less employees and is located in a low-income community. The  
39 operating business shall meet all other conditions of a qualified

1 active low-income business, except as modified by this paragraph  
2 and paragraph (6).”

3 (6) Section 45D(e)(1) of the Internal Revenue Code is modified  
4 to add the following: When the United States Census Bureau  
5 discontinues using the decennial census to report median family  
6 income on a census tract basis, census block group data shall be  
7 used based on the American Community Survey.

8 (7) The following shall apply in lieu of the provisions of Section  
9 45(D)(f)(1) of the Internal Revenue Code, relating to national  
10 limitation on amount of investments designated: “The aggregate  
11 amount of credit that may be ~~allowed~~ *allocated* in any calendar  
12 year pursuant to this section and Section 17053.9 shall be forty  
13 million dollars (\$40,000,000). The committee shall limit the  
14 allocation of credits permitted under this section and Section  
15 17053.9 to a cumulative total of no more than two hundred million  
16 dollars (\$200,000,000).”

17 (8) Section 45D(g)(3) of the Internal Revenue Code, relating  
18 to recapture event, is modified by adding the following:  
19 “Notwithstanding the provisions of this paragraph, a recapture  
20 event shall not have occurred and an investment shall be considered  
21 held by a community development entity upon its sale or  
22 repayment, provided the qualified community development entity  
23 reinvests an amount equal to the capital returned to or recovered  
24 by the qualified community development entity from the original  
25 investment, exclusive of any profits realized, in another qualified  
26 low-income community investment within 12 months of the receipt  
27 of that capital. A qualified community development entity shall  
28 not be required to reinvest capital returned from a qualified  
29 low-income community investment after the sixth anniversary of  
30 the issuance of the qualified equity investment, the proceeds of  
31 which were used to make the qualified low-income community  
32 investment, and the qualified low-income community investment  
33 shall be considered held by the qualified community development  
34 entity through the seventh anniversary of the issuance of the  
35 qualified equity investment.”

36 (9) Section 45D(i) of the Internal Revenue Code, relating to  
37 regulations, shall not apply.

38 (d) (1) The committee shall adopt guidelines necessary or  
39 appropriate to carry out the purposes of this section. The guidelines  
40 shall not disqualify a low-income community investment for the

1 single reason that public or private incentives, loans, equity  
2 investments, technical assistance, or other forms of support have  
3 been or continue to be provided. The adoption of the guidelines  
4 shall not be subject to the rulemaking provisions of the  
5 Administrative Procedure Act of Chapter 3.5 (commencing with  
6 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
7 Code.

8 (2) The committee shall establish and impose reasonable fees  
9 upon entities that apply for the allocation pursuant to subdivision  
10 (d) and use the revenue to defray the cost of administering the  
11 program. The committee shall establish the fees in a manner that  
12 ensures that (A) the total amount collected equals the amount  
13 reasonably necessary to defray the ~~commission's~~ *committee's* costs  
14 in performing its administrative duties under this section, and (B)  
15 the amount paid by each entity reasonably corresponds with the  
16 value of the services provided to the entity.

17 (3) In developing guidelines the committee shall adopt an  
18 allocation process that does all of the following:

19 (A) Creates an equitable distribution process that ensures that  
20 low-income communities across the state have an opportunity to  
21 benefit from the program.

22 (B) Sets minimum organizational capacity standards that  
23 applicants must meet in order to receive an allocation of credits.

24 (C) Requires annual reporting by each community development  
25 ~~organization~~ *entity* that receives an allocation. The report shall  
26 include, but is not limited to, the impact the credit had on the  
27 low-income community, the amount of moneys used, and the types  
28 of activities funded through the equity investment. The reporting  
29 period shall be for a period of eight years following the allocation  
30 of credits.

31 (D) Provides for an annual return of unused credits so that they  
32 may be reallocated to other community development entities.

33 (E) Requires the committee to annually reserve the following:

34 (i) At least 15 percent of the tax credits for community  
35 development entities that target businesses located in low-income  
36 communities facing disproportionate environmental pollution.

37 (ii) At least 15 percent of the tax credits for community  
38 development entities that target rural areas, including businesses  
39 providing equipment or supplies to agricultural producers, packers,  
40 handlers, and processors.

1 (iii) At least 20 percent of the tax credits for community  
2 development entities that target businesses in inner-city areas.

3 (4) The committee shall annually report on its Internet Web site  
4 the information provided by low-income community development  
5 entities and on the geographic distribution of the credits.

6 (e) This section shall remain in effect only until December 1,  
7 2020, and as of that date is repealed.

8 SEC. 6. Section 23623 of the Revenue and Taxation Code, as  
9 added by Section 8 of Chapter 10 of the Third Extraordinary  
10 Session of the Statutes of 2009, is repealed.

11 SEC. 7. Section 23623 of the Revenue and Taxation Code, as  
12 added by Section 8 of Chapter 17 of the Third Extraordinary  
13 Session of the Statutes of 2009, is amended to read:

14 23623. (a) For each taxable year beginning on or after January  
15 1, 2009, there shall be allowed as a credit against the “tax,” as  
16 defined in Section 23036, three thousand dollars (\$3,000) for each  
17 net increase in qualified full-time employees, as specified in  
18 subdivision (c), hired during the taxable year by a qualified  
19 employer.

20 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (f) For purposes of this section:

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

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

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

20 (B) For purposes of this paragraph, the ~~cut-off~~ *cut-off* date shall  
21 be the last day of the calendar quarter within which the Franchise  
22 Tax Board estimates it will have received timely filed original  
23 returns claiming credits under this section and Section 17053.80  
24 that cumulatively total two hundred million dollars (\$200,000,000)  
25 for all taxable years.

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

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

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

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

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

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

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

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

19 SEC. 8. Notwithstanding Section 50199.9 of the Health and  
20 Safety Code, or any other law, the sum of one hundred fifty  
21 thousand dollars (\$150,000) is hereby appropriated from the Tax  
22 Credit Allocation Fee Account to the California Tax Credit  
23 Allocation Committee for purposes of implementing the California  
24 New Markets Tax Credit Program as provided in Sections 17053.9  
25 and 23622.9 of the Revenue and Taxation Code. The appropriated  
26 funds shall remain in the Tax Credit Allocation Fee Account until  
27 such time as the funds are required for purposes of implementing  
28 this new program, and shall be available for expenditure only until  
29 January 1, 2020. It is the intent of the Legislature that these  
30 appropriated funds shall be reimbursed by the application fees  
31 collected by the committee for this new program.

32 SEC. 9. This act provides for a tax levy within the meaning of  
33 Article IV of the Constitution and shall go into immediate effect.

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