

ASSEMBLY BILL

No. 825

Introduced by Assembly Member Medina

February 21, 2013

An act to repeal and amend Sections 17053.80 and 23623 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 825, as introduced, Medina. Income taxes: credits: hiring full-time employees.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit for taxable years beginning on or after January 1, 2009, in the amount of \$3,000 for each qualified full-time employee hired by a qualified employer. Those laws define “qualified employer” as a taxpayer that employed 20 or fewer employees as of the last day of the preceding taxable year.

This bill would, under both laws, for taxable years beginning on or after January 1, 2013, expand the definition of “qualified employer” to mean a taxpayer that employed 50 or fewer employees as of the last day of the preceding taxable year.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

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

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

1 SECTION 1. Section 17053.80 of the Revenue and Taxation
 2 Code, as added by Section 3 of Chapter 10 of the Third
 3 Extraordinary Session of the Statutes of 2009, is repealed.
 4 ~~17053.80.—(a) For each taxable year beginning on or after~~
 5 ~~January 1, 2009, there shall be allowed as a credit against the “net~~
 6 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~
 7 ~~for each net increase in qualified full-time employees, as specified~~
 8 ~~in subdivision (c), hired during the taxable year by a qualified~~
 9 ~~employer.~~
 10 ~~(b) For purposes of this section:~~
 11 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
 12 ~~to divorce, or any other transfer, whether or not for consideration.~~
 13 ~~(2) “Qualified full-time employee” means:~~
 14 ~~(A) A qualified employee who was paid qualified wages by the~~
 15 ~~qualified employer for services of not less than an average of 35~~
 16 ~~hours per week.~~
 17 ~~(B) A qualified employee who was a salaried employee and~~
 18 ~~was paid compensation during the taxable year for full-time~~
 19 ~~employment, within the meaning of Section 515 of the Labor Code,~~
 20 ~~by the qualified employer.~~
 21 ~~(3) A “qualified employee” shall not include any of the~~
 22 ~~following:~~
 23 ~~(A) An employee certified as a qualified employee in an~~
 24 ~~enterprise zone designated in accordance with Chapter 12.8~~
 25 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
 26 ~~Government Code.~~
 27 ~~(B) An employee certified as a qualified disadvantaged~~
 28 ~~individual in a manufacturing enhancement area designated in~~
 29 ~~accordance with Section 7073.8 of the Government Code.~~
 30 ~~(C) An employee certified as a qualified employee in a targeted~~
 31 ~~tax area designated in accordance with Section 7097 of the~~
 32 ~~Government Code.~~
 33 ~~(D) An employee certified as a qualified disadvantaged~~
 34 ~~individual or a qualified displaced employee in a local agency~~
 35 ~~military base recovery area (LAMBRA) designated in accordance~~
 36 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
 37 ~~7 of Title 1 of the Government Code.~~

- 1 ~~(E) An employee whose wages are included in calculating any~~
2 ~~other credit allowed under this part.~~
- 3 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
4 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
5 ~~employees.~~
- 6 ~~(5) “Qualified wages” means wages subject to Division 6~~
7 ~~(commencing with Section 13000) of the Unemployment Insurance~~
8 ~~Code.~~
- 9 ~~(6) “Annual full-time equivalent” means either of the following:~~
- 10 ~~(A) In the case of a full-time employee paid hourly qualified~~
11 ~~wages, “annual full-time equivalent” means the total number of~~
12 ~~hours worked for the taxpayer by the employee (not to exceed~~
13 ~~2,000 hours per employee) divided by 2,000.~~
- 14 ~~(B) In the case of a salaried full-time employee, “annual~~
15 ~~full-time equivalent” means the total number of weeks worked for~~
16 ~~the taxpayer by the employee divided by 52.~~
- 17 ~~(e) The net increase in qualified full-time employees of a~~
18 ~~qualified employer shall be determined as provided by this~~
19 ~~subdivision:~~
- 20 ~~(1) (A) The net increase in qualified full-time employees shall~~
21 ~~be determined on an annual full-time equivalent basis by~~
22 ~~subtracting from the amount determined in subparagraph (C) the~~
23 ~~amount determined in subparagraph (B).~~
- 24 ~~(B) The total number of qualified full-time employees employed~~
25 ~~in the preceding taxable year by the taxpayer and by any trade or~~
26 ~~business acquired by the taxpayer during the current taxable year.~~
- 27 ~~(C) The total number of full-time employees employed in the~~
28 ~~current taxable year by the taxpayer and by any trade or business~~
29 ~~acquired during the current taxable year.~~
- 30 ~~(2) For taxpayers who first commence doing business in this~~
31 ~~state during the taxable year, the number of full-time employees~~
32 ~~for the immediately preceding prior taxable year shall be zero.~~
- 33 ~~(d) In the case where the credit allowed by this section exceeds~~
34 ~~the “net tax,” the excess may be carried over to reduce the “net~~
35 ~~tax” in the following year, and succeeding seven years if necessary,~~
36 ~~until the credit is exhausted.~~
- 37 ~~(e) Any deduction otherwise allowed under this part for qualified~~
38 ~~wages shall not be reduced by the amount of the credit allowed~~
39 ~~under this section.~~
- 40 ~~(f) For purposes of this section:~~

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

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

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

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

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

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

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

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

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

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

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

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

12 17053.80. (a) For each taxable year beginning on or after
13 January 1, 2009, there shall be allowed as a credit against the “net
14 tax,” as defined in Section 17039, three thousand dollars (\$3,000)
15 for each net increase in qualified full-time employees, as specified
16 in subdivision (c), hired during the taxable year by a qualified
17 employer.

18 (b) For purposes of this section:

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

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

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

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

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

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

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

38 (C) An employee certified as a qualified employee in a targeted
39 tax area designated in accordance with Section 7097 of the
40 Government Code.

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

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

8 (4) ~~“Qualified—~~(A) *For taxable years beginning on or after*
9 *January 1, 2009, and before January 1, 2013, “qualified employer”*
10 *means a taxpayer that, as of the last day of the preceding taxable*
11 *year, employed a total of 20 or fewer employees.*

12 (B) *For taxable years beginning on or after January 1, 2013,*
13 *“qualified employer” means a taxpayer that, as of the last day of*
14 *the preceding taxable year, employed a total of 50 or fewer*
15 *employees.*

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

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

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

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

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

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

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

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

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

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

9 (e) ~~Any~~ A deduction otherwise allowed under this part for
10 qualified wages shall not be reduced by the amount of the credit
11 allowed under this section.

12 (f) For purposes of this section:

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

16 (2) In determining whether the taxpayer has first commenced
17 doing business in this state during the taxable year, the provisions
18 of subdivision (f) of Section ~~17276~~, *17276.20*, without application
19 of paragraph (7) of that subdivision, shall apply.

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

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

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

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

37 (B) Any disallowance of a credit claimed due to a determination
38 under this subdivision, including the application of the limitation
39 specified in paragraph (1), shall be treated as a mathematical error
40 appearing on the return. Any amount of tax resulting from such

1 disallowance may be assessed by the Franchise Tax Board in the
 2 same manner as provided by Section 19051.

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

7 (h) (1) The Franchise Tax Board may prescribe rules, ~~guidelines~~
 8 *guidelines*, or procedures necessary or appropriate to carry out the
 9 purposes of this section, including any guidelines regarding the
 10 limitation on total credits allowable under this section and Section
 11 23623 and guidelines necessary to avoid the application of
 12 paragraph (2) of subdivision (f) through split-ups, shell
 13 corporations, partnerships, tiered ownership structures, or
 14 otherwise.

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

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

23 SEC. 3. Section 23623 of the Revenue and Taxation Code, as
 24 added by Section 8 of Chapter 10 of the Third Extraordinary
 25 Session of the Statutes of 2009, is repealed.

26 ~~23623. (a) For each taxable year beginning on or after January~~
 27 ~~1, 2009, there shall be allowed as a credit against the "tax," as~~
 28 ~~defined in Section 23036, three thousand dollars (\$3,000) for each~~
 29 ~~net increase in qualified full-time employees, as specified in~~
 30 ~~subdivision (e), hired during the taxable year by a qualified~~
 31 ~~employer.~~

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

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

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

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

39 (B) ~~A qualified employee who was a salaried employee and~~
 40 ~~was paid compensation during the taxable year for full-time~~

1 employment, within the meaning of Section 515 of the Labor Code,
2 by the qualified employer.

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

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

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

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

15 ~~(D) An employee certified as a qualified disadvantaged~~
16 ~~individual or a qualified displaced employee in a local agency~~
17 ~~military base recovery area (LAMBRA) designated in accordance~~
18 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
19 ~~7 of Title 1 of the Government Code.~~

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

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

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

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

29 ~~(A) In the case of a full-time employee paid hourly qualified~~
30 ~~wages, “annual full-time equivalent” means the total number of~~
31 ~~hours worked for the taxpayer by the employee (not to exceed~~
32 ~~2,000 hours per employee) divided by 2,000.~~

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

36 ~~(e) The net increase in qualified full-time employees of a~~
37 ~~qualified employer shall be determined as provided by this~~
38 ~~subdivision:~~

39 ~~(1) (A) The net increase in qualified full-time employees shall~~
40 ~~be determined on an annual full-time equivalent basis by~~

1 subtracting from the amount determined in subparagraph (C) the
2 amount determined in subparagraph (B):

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

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

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

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

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

19 (f) For purposes of this section:

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

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

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

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

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

39 (3) (A) The determinations of the Franchise Tax Board with
40 respect to the cut-off date, the date a return is received, and whether

1 a return has been timely filed for purposes of this subdivision may
2 not be reviewed in any administrative or judicial proceeding.

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

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

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

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

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

28 SEC. 4. Section 23623 of the Revenue and Taxation Code, as
29 added by Section 8 of Chapter 17 of the Third Extraordinary
30 Session of the Statutes of 2009, is amended to read:

31 23623. (a) For each taxable year beginning on or after January
32 1, 2009, there shall be allowed as a credit against the "tax," as
33 defined in Section 23036, three thousand dollars (\$3,000) for each
34 net increase in qualified full-time employees, as specified in
35 subdivision (c), hired during the taxable year by a qualified
36 employer.

37 (b) For purposes of this section:

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

40 (2) "Qualified full-time employee" means:

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

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

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

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

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

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

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

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

27 (4) ~~“Qualified—~~(A) *For taxable years beginning on or after*
 28 *January 1, 2009, and before January 1, 2013, “qualified employer”*
 29 *means a taxpayer that, as of the last day of the preceding taxable*
 30 *year, employed a total of 20 or fewer employees.*

31 (B) *For taxable years beginning on or after January 1, 2013,*
 32 *“qualified employer” means a taxpayer that, as of the last day of*
 33 *the preceding taxable year, employed a total of 50 or fewer*
 34 *employees.*

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

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

39 (A) In the case of a full-time employee *who was* paid hourly
 40 qualified wages, “annual full-time equivalent” means the total

1 number of hours worked for the taxpayer by the employee (not to
2 exceed 2,000 hours per employee) divided by 2,000.

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

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

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

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

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

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

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

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

30 (f) For purposes of this section:

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

34 (2) In determining whether the taxpayer has first commenced
35 doing business in this state during the taxable year, the provisions
36 of subdivision ~~(f)~~ (g) of Section ~~17276, 24416.20~~, without
37 application of paragraph (7) of that subdivision, shall apply.

38 (g) (1) (A) Credit under this section and Section 17053.80 shall
39 be allowed only for credits claimed on timely filed original returns

1 received by the Franchise Tax Board on or before the cut-off date
2 established by the Franchise Tax Board.

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

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

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

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

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

25 (h) (1) The Franchise Tax Board may prescribe rules, ~~guidelines~~
26 *guidelines*, or procedures necessary or appropriate to carry out the
27 purposes of this section, including any guidelines regarding the
28 limitation on total credits allowable under this section and Section
29 17053.80 and guidelines necessary to avoid the application of
30 paragraph (2) of subdivision (f) through split-ups, shell
31 corporations, partnerships, tiered ownership structures, or
32 otherwise.

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

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

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

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