AMENDED IN ASSEMBLY APRIL 8, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 927

Introduced by Assembly Member Muratsuchi

February 22, 2013

An act to add ~~and repeal~~ Sections ~~6377.6,~~ 17053.81~~, and~~ *and* 23623.1 ~~of~~ *to* the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 927, as amended, Muratsuchi. Income taxes: credits: ~~hiring: sales and use taxes: exemption: manufacturing: research and development.~~ *hiring.*

~~Existing sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. Those laws provides various exemptions from those taxes.~~

~~This bill would exempt from those taxes, on and after January 1, 2014, and before January 1, 2018, the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased for use by a qualified person, as defined, for use primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of property, as specified, or for use primarily in research and development, as specified, or to maintain, repair, measure, or test that property. The bill would also exempt from those~~

~~taxes the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property purchased for use by a contractor, as specified, for a qualified person. The bill would require the purchaser to furnish the retailer with an exemption certificate, as specified.~~

~~The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws.~~

~~This bill would specify that this exemption does not apply to local sales and use taxes and transactions and use taxes.~~

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.

This bill would, under both laws, for taxable years beginning on or after January 1, 2014, allow a credit to a qualified employer, as defined, in an amount equal to $3,000 for each net increase in qualified full-time employee hired during the taxable year by a qualified employer, and an additional $1,000 per qualified full-time employee hired during the taxable year by a qualified employer if the qualified full-time employee is a veteran or an additional $2,000 per qualified full-time employee hired during the taxable year by a qualified employer if the qualified full-time employee is a service-connected disabled veteran, as provided. *This bill would limit the total amount of credit allowed to a qualified employer to an amount not to exceed $5,000,000 for all taxable years.* This bill would cap the total amount of credit which may be ~~allocated~~ *allowed* under those provisions ~~to $____~~ *for any calendar year to $35,000,000*.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. It is the intent of the Legislature to create a competitive tax policy for businesses involved with research, development, and manufacturing.

~~SEC. 2. Section 6377.6 is added to the Revenue and Taxation Code, to read:~~

~~6377.6. (a) Beginning January 1, 2014, and before January 1, 2018, there are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state of, all of the following:~~

~~(1) Qualified tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered property to its completed form, including packaging, if required.~~

~~(2) Qualified tangible personal property purchased for use by a qualified person to be used primarily in research and development.~~

~~(3) Qualified tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any qualified tangible personal property described in paragraph (1) or (2).~~

~~(4) Qualified tangible personal property purchased for use by a contractor purchasing that property for use in the performance of a construction contract for the qualified person, who will use the property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a storage facility for use in connection with those processes.~~

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

~~(1) “Fabricating” means to make, build, create, produce, or assemble components or property to work in a new or different manner.~~

~~(2) “Manufacturing” means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.~~

~~(3) “Primarily” means 50 percent or more of the time.~~

~~(4) "Process" means the period beginning at the point at which any raw materials are received by the qualified person and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified person's manufacturing, processing, refining, fabricating, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified person's manufacturing, processing, refining, fabricating, or recycling activity is conducted shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.~~

~~(5) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of tangible personal property.~~

~~(6) "Qualified person" means either of the following:~~

~~(A) A person who is primarily engaged in those lines of business classified in Industry Groups 3111 to 3399, inclusive, Industry Group 5112, NAICS Industry 22111, or NAICS Industry 541711 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget, 2012 edition.~~

~~(B) An affiliate of a person who is a qualified person pursuant to subparagraph (A) if the affiliate is included as a member of the qualified person's unitary group for which a combined report is required to be filed under Article 1 (commencing with Section 25101) of Chapter 17 of Part 11.~~

~~(7) (A) "Qualified tangible personal property" includes, but is not limited to, all of the following:~~

~~(i) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.~~

~~(ii) Equipment or devices used or required to operate, control, regulate, or maintain the machinery and equipment, including, without limitation, computers, data processing equipment, and computer software, together with all repair and replacement parts~~

~~with a useful life of one or more years, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the qualified person or another party.~~

~~(iii) Qualified tangible personal property used in pollution control that exceeds standards established by this state or any local or regional governmental agency within this state.~~

~~(iv) Special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or that constitute a research or storage facility used during those processes. Buildings used solely for warehousing purposes after completion of those processes are not included.~~

~~(B) "Qualified tangible personal property" does not include any of the following:~~

~~(i) Consumables with a useful life of less than one year.~~

~~(ii) Furniture, inventory, and equipment used in the extraction process, or equipment used to store finished products that have completed the manufacturing, processing, refining, fabricating, or recycling process.~~

~~(iii) Tangible personal property used primarily in administration, general management, or marketing.~~

~~(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.~~

~~(9) "Research and development" means those activities defined in Section 174 of the Internal Revenue Code or in any regulations thereunder.~~

~~(10) "Useful life" for tangible personal property that is treated as having a useful life of one or more years for state income or franchise tax purposes shall be deemed to have a useful life of one or more years for purposes of this section. "Useful life" for tangible personal property that is treated as having a useful life of less than one year for state income or franchise tax purposes shall be deemed to have a useful life of less than one year for purposes of this section.~~

~~(c) An exemption shall not be allowed under this section unless the purchaser furnishes the retailer with an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe, and the retailer retains the exemption certificate in its records and furnishes the exemption certificate to~~

~~the board upon request. The exemption certificate shall contain the sales price of the qualified tangible personal property.~~

~~(d) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.~~

~~(e) (1) Notwithstanding subdivision (a), the exemption provided by this section shall not apply to any sale or use of tangible personal property that, within one year from the date of purchase, is either removed from California, converted from an exempt use under subdivision (a) to some other use not qualifying for the exemption, or used in a manner not qualifying for the exemption. The taxpayer that has received the exemption under this section for purchasing qualifying tangible personal property shall notify the board if the property is either removed from California, converted from an exempt use under subdivision (a) within one year from the date of purchase, or used in a manner not qualifying for the exemption.~~

~~(2) If a purchaser certifies in writing to the seller that the tangible personal property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax, and within one year from the date of purchase, the purchaser (1) removes that property outside California, (2) converts that property for use in a manner not qualifying for the exemption, or (3) uses that property in a manner not qualifying for the exemption, the purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so removed, converted, or used, and the sales price of the property to the purchaser shall be deemed the gross receipts from that retail sale.~~

~~(f) At the time necessary information technologies and electronic data warehousing capabilities of the board are sufficiently established, the board shall determine an efficient means by which qualified persons may electronically apply for, and receive, a form of exemption certificate that contains information that would assist~~

~~them in complying with this part with respect to the exemption established by this section.~~

~~(g) This section shall remain in effect only until January 1, 2018, and as of that date is repealed.~~

~~SEC. 3.~~

SEC. 2. Section 17053.81 is added to the Revenue and Taxation Code, to read:

17053.81. (a) (1) For each taxable year beginning on or after January 1, 2014, there shall be allowed to a qualified employer a credit against the "net tax," as defined in Section 17039, in an amount described in paragraph (2).

(2) The amount of credit allowed under this section is as follows:

(A) *(i)* Three thousand dollars ($3,000) for each net increase in qualified full-time employee hired during the taxable year by a qualified employer.

~~(B)~~

(ii) An additional one thousand dollars ($1,000) per qualified full-time employee hired during the taxable year by a qualified employer if the qualified full-time employee is a veteran or an additional two thousand dollars ($2,000) per qualified full-time employee hired during the taxable year by a qualified employer if the qualified full-time employee is a service-connected disabled veteran.

(B) The total amount of credits allowed under this section to a qualified employer shall not exceed five million dollars ($5,000,000) for all taxable years.

(b) For purposes of this section:

(1) "Annual full-time equivalent" means either of the following:

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

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

(2) "Qualified full-time employee" means either of the following:

(A) An employee who was paid wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance

Code by the qualified employer for services of not less than an average of 35 hours per week.

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

(3) "Qualified employer" means a taxpayer who employed qualified full-time employees who are located in this state and meets any of the following:

(A) The taxpayer manufactures, assembles, tests, renovates, or converts aircraft and spacecraft.

(B) The taxpayer manufactures or designs aircraft or spacecraft engines and engine parts.

(C) The taxpayer manufactures or designs aircraft and spacecraft auxiliary components, including detection equipment, navigation, and guidance systems.

(D) The taxpayer provides aircraft and spacecraft support services, including launching, operating, and retrieving air and space vehicles.

(E) The taxpayer is a military contractor that is involved with aerospace defense, including the manufacturing of missiles and military airplanes.

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

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

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

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

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

(d) For purposes of this section:

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

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

~~(e) (1) (A) Credit under this section and Section 23623.1 shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the cut-off date established by the Franchise Tax Board.~~

~~(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 23623.1 that cumulatively total ____ dollars ($____) for all taxable years.~~

(e) (1) The aggregate amount of credits that may be allowed for any calendar year under this section and Section 23623.1 shall not exceed an amount equal to thirty-five million dollars ($35,000,000).

(2) The credits allowed under this section and Section 23623.1 shall be allowed to a taxpayer on a first-come, first-served basis.

(3) The taxpayer shall claim the credit on a timely filed original return.

~~(2)~~

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

~~(3)~~

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

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

~~(4)~~

(6) The Franchise Tax Board shall periodically provide notice on its Web site with respect to the amount of credit under this section and Section 23623.1 claimed on timely filed original returns received by the Franchise Tax Board.

(f) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit is exhausted.

(g) (1) The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section.

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

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

~~SEC. 4.~~

SEC. 3. Section 23623.1 is added to the Revenue and Taxation Code, to read:

23623.1. (a) (1) For each taxable year beginning on or after January 1, 2014, there shall be allowed to a qualified employer a credit against the "tax," as defined in Section 23036, in an amount described in paragraph (2).

(2) The amount of credit allowed under this section is as follows:

(A) *(i)* Three thousand dollars ($3,000) for each net increase in qualified full-time employee hired during the taxable year by a qualified employer.

~~(B)~~

(ii) An additional one thousand dollars ($1,000) per qualified full-time employee hired during the taxable year by a qualified employer if the qualified full-time employee is a veteran or an additional two thousand dollars ($2,000) per qualified full-time employee hired during the taxable year by a qualified employer if the qualified full-time employee is a service-connected disabled veteran.

(B) The total amount of credits allowed under this section to a qualified employer shall not exceed five million dollars ($5,000,000) for all taxable years.

(b) For purposes of this section:

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

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

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

(2) “Qualified full-time employee” means either of the following:

(A) An employee who was paid wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code by the qualified employer for services of not less than an average of 35 hours per week.

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

(3) “Qualified employer” means a taxpayer who employed qualified full-time employees who are located in this state and meets any of the following:

(A) The taxpayer manufactures, assembles, tests, renovates, or converts aircraft and spacecraft.

(B) The taxpayer manufactures or designs aircraft or spacecraft engines and engine parts.

(C) The taxpayer manufactures or designs aircraft and spacecraft auxiliary components, including detection equipment, navigation, and guidance systems.

(D) The taxpayer provides aircraft and spacecraft support services, including launching, operating, and retrieving air and space vehicles.

(E) The taxpayer is a military contractor that is involved with aerospace defense, including the manufacturing of missiles and military airplanes.

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

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

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

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

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

(d) For purposes of this section:

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

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

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

~~(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 17053.81 that cumulatively total ____ dollars ($____) for all taxable years.~~

(e) (1) The aggregate amount of credits that may be allowed for any calendar year under this section and Section 17053.81 shall not exceed an amount equal to thirty-five million dollars ($35,000,000).

(2) The credits allowed under this section and Section 17053.81 shall be allowed to a taxpayer on a first-come, first-served basis.

(3) The taxpayer shall claim the credit on a timely filed original return.

~~(2)~~

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

~~(3)~~

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

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

~~(4)~~

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

(f) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit is exhausted.

(g) (1) The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section.

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

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

~~SEC. 5.~~

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

O