

AMENDED IN ASSEMBLY JULY 1, 2013

AMENDED IN ASSEMBLY JUNE 26, 2013

SENATE BILL

No. 90

**Introduced by ~~Committee on Budget and Fiscal Review~~ Senators
*Cannella and Galgiani***

January 10, 2013

An act to amend Sections 6377.1, 17053.73 ~~and~~, 17059.2, 23626, and 23689 of the Revenue and Taxation Code, as added by Assembly Bill 93 of the 2013–14 Regular Session, relating to economic development, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 90, as amended, ~~Committee on Budget and Fiscal Review~~ *Cannella*. Economic development: taxation: ~~credits~~: *credits*: *exemption*.

Existing sales and use tax laws impose taxes 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, and provides various exemptions from those taxes.

Existing law exempts from those taxes, on and after July 1, 2014, and before January 1, 2019, the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased by a qualified person for use primarily in manufacturing, processing, refining, fabricating, or recycling of property, as specified; qualified tangible personal property purchased for use by a contractor for specified purposes, as provided; and qualified

tangible personal property purchased for use by a qualified person to be used primarily in research and development, as provided, and until January 1, 2021, the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased by a qualified person for those purposes for use within a designated census tract or a former enterprise zone. Existing law specifies that this exemption does not apply to local sales and use taxes, transactions and use taxes, and specified state taxes from which revenues are deposited into the Local Public Safety Fund, the Education Protection Account, the Local Revenue Fund, the Fiscal Recovery Fund, or the Local Revenue Fund 2011.

This bill would extend the application of the exemption from January 1, 2019, to July 1, 2022, and eliminate the requirement that, after January 1, 2019, the qualified tangible personal property purchased by a qualified person for those purposes for use within a designated census tract or a former enterprise zone.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including hiring credits within the specified economic development areas, and a hiring credit for taxpayers, other than those allowed a credit with respect to operating in the specified economic development areas.

This bill would, under both laws for taxable years beginning on or after January 1, 2014, and before January 1, 2021, revise the definitions of “qualified full-time employee,” “qualified taxpayer,” and “small business” for the credit against those taxes for portions of the wages paid by a taxpayer, engaged in a trade or business within a designated census tract, as defined, or ~~a former enterprise zone~~ *an economic development area*, to certain full-time employees who provide services for that taxpayer in connection with that trade or business. *This bill would additionally expand the definition of “qualified wages” for qualified full-time employees within a designated pilot area, as provided.*

Existing law also allows a credit against tax under both laws for each taxable year beginning on or after January 1, 2014, and before January 1, 2025, in an amount as provided in a written agreement between the Governor’s Office of Business and Economic Development and the taxpayer, agreed upon by the California Competes Tax Credit Committee, and based on specified factors, including the number of jobs the taxpayer will create or retain in the state and the amount of investment in the state by the taxpayer. Existing law limits the aggregate

amount of credits allocated to taxpayers to a specified sum per fiscal year.

This bill would make specifications regarding the fiscal year allocation under these provisions of credit amounts and the taxable years for which the allocated amounts may be claimed as a credit allowed to taxpayers.

This bill would also restate the carryover period of certain tax credits that were amended by AB 93 of the 2013–14 Regular Session and the operation of existing law with respect to those carryover credits.

This bill would make the operation of ~~these~~ its modifications and revisions contingent on the enactment of ~~Assembly Bill~~ AB 93 of the 2013–14 Regular Session, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

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 6377.1 of the Revenue and Taxation Code,
2 as added by Section 6 of Assembly Bill 93 of the 2013-14 Regular
3 Session, is amended to read:

4 6377.1. (a) ~~(1)~~—Except as provided in subdivision (e), on or
5 after July 1, 2014, and before ~~January 1, 2019~~ July 1, 2022, there
6 are exempted from the taxes imposed by this part the gross receipts
7 from the sale of, and the storage, use, or other consumption in this
8 state of, any of the following:

9 ~~(A)~~

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

18 ~~(B)~~

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

1 ~~(C)~~

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

6 ~~(D)~~

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

13 ~~(2) Except as provided in subdivision (c), on or after July 1,~~
14 ~~2014, and before July 1, 2021, there are exempted from the taxes~~
15 ~~imposed by this part the gross receipts from the sale of, and the~~
16 ~~storage, use, or other consumption in this state of qualified tangible~~
17 ~~personal property purchased for use within a designated census~~
18 ~~tract, as defined in paragraph (7) of subdivision (b) of Section~~
19 ~~17053.73 and paragraph (7) of subdivision (b) of Section 23626,~~
20 ~~or a former enterprise zone, as defined in paragraph (8) of~~
21 ~~subdivision (b) of Section 17053.73 and paragraph (8) of~~
22 ~~subdivision (b) of Section 23626, by any of the following:~~

23 ~~(A) A qualified person to be used primarily in any stage of the~~
24 ~~manufacturing, processing, refining, fabricating, or recycling of~~
25 ~~tangible personal property, beginning at the point any raw materials~~
26 ~~are received by the qualified person and introduced into the process~~
27 ~~and ending at the point at which the manufacturing, processing,~~
28 ~~refining, fabricating, or recycling has altered tangible personal~~
29 ~~property to its completed form, including packaging, if required.~~

30 ~~(B) A qualified person to be used primarily in research and~~
31 ~~development.~~

32 ~~(C) A qualified person to be used primarily to maintain, repair,~~
33 ~~measure, or test any qualified tangible personal property described~~
34 ~~in subparagraph (A) or (B).~~

35 ~~(D) A contractor purchasing that property for use in the~~
36 ~~performance of a construction contract for the qualified person,~~
37 ~~that will use that property as an integral part of the manufacturing,~~
38 ~~processing, refining, fabricating, or recycling process, or as a~~
39 ~~research or storage facility for use in connection with those~~
40 ~~processes.~~

1 (b) For purposes of this section:

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

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

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

13 (4) “Process” means the period beginning at the point at which
14 any raw materials are received by the qualified person and
15 introduced into the manufacturing, processing, refining, fabricating,
16 or recycling activity of the qualified person and ending at the point
17 at which the manufacturing, processing, refining, fabricating, or
18 recycling activity of the qualified person has altered tangible
19 personal property to its completed form, including packaging, if
20 required. Raw materials shall be considered to have been
21 introduced into the process when the raw materials are stored on
22 the same premises where the qualified person’s manufacturing,
23 processing, refining, fabricating, or recycling activity is conducted.
24 Raw materials that are stored on premises other than where the
25 qualified person’s manufacturing, processing, refining, fabricating,
26 or recycling activity is conducted shall not be considered to have
27 been introduced into the manufacturing, processing, refining,
28 fabricating, or recycling process.

29 (5) “Processing” means the physical application of the materials
30 and labor necessary to modify or change the characteristics of
31 tangible personal property.

32 (6) (A) “Qualified person” means a person that is primarily
33 engaged in those lines of business described in Codes 3111 to
34 3399, inclusive, 541711, or 541712 of the North American Industry
35 Classification System (NAICS) published by the United States
36 Office of Management and Budget (OMB), 2012 edition.

37 (B) Notwithstanding subparagraph (A), “qualified person” shall
38 not include either of the following:

39 (i) An apportioning trade or business that is required to apportion
40 its business income pursuant to subdivision (b) of Section 25128.

- 1 (ii) A trade or business conducted wholly within this state that
2 would be required to apportion its business income pursuant to
3 subdivision (b) of Section 25128 if it were subject to apportionment
4 pursuant to Section 25101.
- 5 (7) (A) “Qualified tangible personal property” includes, but is
6 not limited to, all of the following:
 - 7 (i) Machinery and equipment, including component parts and
8 contrivances such as belts, shafts, moving parts, and operating
9 structures.
 - 10 (ii) Equipment or devices used or required to operate, control,
11 regulate, or maintain the machinery, including, but not limited to,
12 computers, data-processing equipment, and computer software,
13 together with all repair and replacement parts with a useful life of
14 one or more years therefor, whether purchased separately or in
15 conjunction with a complete machine and regardless of whether
16 the machine or component parts are assembled by the qualified
17 person or another party.
 - 18 (iii) Tangible personal property used in pollution control that
19 meets standards established by this state or any local or regional
20 governmental agency within this state.
 - 21 (iv) Special purpose buildings and foundations used as an
22 integral part of the manufacturing, processing, refining, fabricating,
23 or recycling process, or that constitute a research or storage facility
24 used during those processes. Buildings used solely for warehousing
25 purposes after completion of those processes are not included.
- 26 (B) “Qualified tangible personal property” shall not include any
27 of the following:
 - 28 (i) Consumables with a useful life of less than one year.
 - 29 (ii) Furniture, inventory, and equipment used in the extraction
30 process, or equipment used to store finished products that have
31 completed the manufacturing, processing, refining, fabricating, or
32 recycling process.
 - 33 (iii) Tangible personal property used primarily in administration,
34 general management, or marketing.
- 35 (8) “Refining” means the process of converting a natural
36 resource to an intermediate or finished product.
- 37 (9) “Research and development” means those activities that are
38 described in Section 174 of the Internal Revenue Code or in any
39 regulations thereunder.

1 (10) “Useful life” for tangible personal property that is treated
2 as having a useful life of one or more years for state income or
3 franchise tax purposes shall be deemed to have a useful life of one
4 or more years for purposes of this section. “Useful life” for tangible
5 personal property that is treated as having a useful life of less than
6 one year for state income or franchise tax purposes shall be deemed
7 to have a useful life of less than one year for purposes of this
8 section.

9 (c) An exemption shall not be allowed under this section unless
10 the purchaser furnishes the retailer with an exemption certificate,
11 completed in accordance with any instructions or regulations as
12 the board may prescribe, and the retailer retains the exemption
13 certificate in its records and furnishes it to the board upon request.

14 (d) (1) Notwithstanding the Bradley-Burns Uniform Local
15 Sales and Use Tax Law (Part 1.5 (commencing with Section 7200))
16 and the Transactions and Use Tax Law (Part 1.6 (commencing
17 with Section 7251)), the exemption established by this section
18 shall not apply with respect to any tax levied by a county, city, or
19 district pursuant to, or in accordance with, either of those laws.

20 (2) Notwithstanding subdivision (a), the exemption established
21 by this section shall not apply with respect to any tax levied
22 pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, pursuant
23 to Section 35 of Article XIII of the California Constitution, or any
24 tax levied pursuant to Section 6051 or 6201 that is deposited in
25 the State Treasury to the credit of the Local Revenue Fund 2011
26 pursuant to Section 6051.15 or 6201.15.

27 (e) (1) The exemption provided by this section shall not apply
28 to either of the following:

29 (A) Any tangible personal property purchased during any
30 calendar year that exceeds two hundred million dollars
31 (\$200,000,000) of purchases of qualified tangible personal property
32 for which an exemption is claimed by a qualified person under
33 this section. For purposes of this subparagraph, in the case of a
34 qualified person that is required to be included in a combined report
35 under Section 25101 or authorized to be included in a combined
36 report under Section 25101.15, the aggregate of all purchases of
37 qualified personal property for which an exemption is claimed
38 pursuant to this section by all persons that are required or
39 authorized to be included in a combined report shall not exceed
40 two hundred million dollars (\$200,000,000) in any calendar year.

1 (B) The sale or storage, use, or other consumption of property
2 that, within one year from the date of purchase, is removed from
3 California, converted from an exempt use under subdivision (a)
4 to some other use not qualifying for exemption, or used in a manner
5 not qualifying for exemption.

6 (2) If a purchaser certifies in writing to the seller that the tangible
7 personal property purchased without payment of the tax will be
8 used in a manner entitling the seller to regard the gross receipts
9 from the sale as exempt from the sales tax, and the purchase
10 exceeds the two-hundred-million-dollar (\$200,000,000) limitation
11 described in subparagraph (A) of paragraph (1), or within one year
12 from the date of purchase, the purchaser removes that property
13 from California, converts that property for use in a manner not
14 qualifying for the exemption, or uses that property in a manner
15 not qualifying for the exemption, the purchaser shall be liable for
16 payment of sales tax, with applicable interest, as if the purchaser
17 were a retailer making a retail sale of the tangible personal property
18 at the time the tangible personal property is so purchased, removed,
19 converted, or used, and the cost of the tangible personal property
20 to the purchaser shall be deemed the gross receipts from that retail
21 sale.

22 (f) This section shall apply to leases of qualified tangible
23 personal property classified as “continuing sales” and “continuing
24 purchases” in accordance with Sections 6006.1 and 6010.1. The
25 exemption established by this section shall apply to the rentals
26 payable pursuant to the lease, provided the lessee is a qualified
27 person and the tangible personal property is used in an activity
28 described in subdivision (a).

29 (g) (1) Upon the effective date of this section, the Department
30 of Finance shall estimate the total dollar amount of exemptions
31 that will be taken for each calendar year, or any portion thereof,
32 for which this section provides an exemption.

33 (2) No later than each March 1 next following a calendar year
34 for which this section provides an exemption, the board shall
35 provide to the Joint Legislative Budget Committee a report of the
36 total dollar amount of exemptions taken under this section for the
37 immediately preceding calendar year. The report shall compare
38 the total dollar amount of exemptions taken under this section for
39 that calendar year with the department’s estimate for that same
40 calendar year. If that total dollar amount taken is less than the

1 estimate for that calendar year, the report shall identify options for
2 increasing exemptions taken so as to meet estimated amounts.

3 (h) This section is repealed on January 1, ~~2019~~ 2023.

4 ~~SECTION 4.~~

5 *SEC. 2.* Section 17053.73 of the Revenue and Taxation Code,
6 as added by Section 13 of Assembly Bill 93 of the 2013-14 Regular
7 Session, is amended to read:

8 17053.73. (a) (1) For each taxable year beginning on or after
9 January 1, 2014, and before January 1, 2021, there shall be allowed
10 to a qualified taxpayer that hires a qualified full-time employee
11 and pays or incurs qualified wages attributable to work performed
12 by the qualified full-time employee in a designated census tract
13 or ~~former enterprise zone~~ *economic development area*, and that
14 receives a tentative credit reservation for that qualified full-time
15 employee, a credit against the “net tax,” as defined in Section
16 17039, in an amount calculated under this section.

17 (2) The amount of the credit allowable under this section for a
18 taxable year shall be equal to the product of the tentative credit
19 amount for the taxable year and the applicable percentage for that
20 taxable year.

21 (3) (A) If a qualified taxpayer relocates to a designated census
22 tract or ~~former enterprise zone~~ *economic development area*, the
23 qualified taxpayer shall be allowed a credit with respect to qualified
24 wages for each qualified full-time employee employed within the
25 new location only if the qualified taxpayer provides each employee
26 at the previous location or locations a written offer of employment
27 at the new location in the designated census tract or ~~former~~
28 ~~enterprise zone~~ *economic development area* with comparable
29 compensation.

30 (B) For purposes of this paragraph, “relocates to a designated
31 census tract or ~~former enterprise zone~~” *economic development*
32 *area*” means an increase in the number of qualified full-time
33 employees, employed by a qualified taxpayer, within a designated
34 census tract or tracts or ~~former enterprise zones~~ *economic*
35 *development areas* within a 12-month period in which there is a
36 decrease in the number of full-time employees, employed by the
37 qualified taxpayer in this state, but outside of designated census
38 tracts or ~~former enterprise zone~~ *economic development areas*.

39 (C) This paragraph shall not apply to a small business.

1 (4) The credit allowed by this section may be claimed only on
2 a timely filed original return of the qualified taxpayer and only
3 with respect to a qualified full-time employee for whom the
4 qualified taxpayer has received a tentative credit reservation.

5 (b) For purposes of this section:

6 (1) The “tentative credit amount” for a taxable year shall be
7 equal to the product of the applicable credit percentage for each
8 qualified full-time employee and the qualified wages paid by the
9 qualified taxpayer during the taxable year to that qualified full-time
10 employee.

11 (2) The “applicable percentage” for a taxable year shall be equal
12 to a fraction, the numerator of which is the net increase in the total
13 number of full-time employees employed in this state during the
14 taxable year, determined on an annual full-time equivalent basis,
15 as compared with the total number of full-time employees
16 employed in this state during the base year, determined on the
17 same basis, and the denominator of which shall be the total number
18 of qualified full-time employees employed in this state during the
19 taxable year. The applicable percentage shall not exceed 100
20 percent.

21 (3) The “applicable credit percentage” means the credit
22 percentage for the calendar year during which a qualified full-time
23 employee was first employed by the qualified taxpayer. The
24 applicable credit percentage for all calendar years shall be 35
25 percent.

26 (4) “Base year” means the 2013 taxable year, except in the case
27 of a qualified taxpayer who first hires a qualified full-time
28 employee in a taxable year beginning on or after January 1, 2015,
29 the base year means the taxable year immediately preceding the
30 taxable year in which a qualified full-time employee was first hired
31 by the qualified taxpayer.

32 (5) “Acquired” includes any gift, inheritance, transfer incident
33 to divorce, or any other transfer, whether or not for consideration.

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

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

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

4 (7) “Designated census tract” means a census tract within the
5 state that is determined by the Department of Finance to have a
6 civilian unemployment rate that is within the top 25 percent of all
7 census tracts within the state and has a poverty rate within the top
8 25 percent of all census tracts within the state, as prescribed in
9 Section 13073.5 of the Government Code.

10 ~~(8) “Former enterprise zone” means an enterprise zone~~
11 ~~designated as of December 31, 2011, and any expansion of an~~
12 ~~enterprise zone prior to December 31, 2012, under former Chapter~~
13 ~~12.8 (commencing with former Section 7070) of Division 7 of~~
14 ~~Title 1 of the Government Code, as in effect on December 31,~~
15 ~~2012, excluding any census tract within an enterprise zone that is~~
16 ~~identified by the Department of Finance pursuant to Section~~
17 ~~13073.5 of the Government Code as a census tract within the lowest~~
18 ~~quartile of census tracts with the lowest civilian unemployment~~
19 ~~and poverty.~~

20 (8) “Economic development area” means either of the following:

21 (A) A former enterprise zone. For purposes of this section,
22 “former enterprise zone” means an enterprise zone designated
23 and in effect as of December 31, 2011, any enterprise zone
24 designated during 2012, and any revision of an enterprise zone
25 prior to June 30, 2013, under former Chapter 12.8 (commencing
26 with Section 7070) of Division 7 of Title 1 of the Government Code,
27 as in effect on December 31, 2012, excluding any census tract
28 within an enterprise zone that is identified by the Department of
29 Finance pursuant to Section 13073.5 of the Government Code as
30 a census tract within the lowest quartile of census tracts with the
31 lowest civilian unemployment and poverty.

32 (B) A local agency military base recovery area designated as
33 of the effective date of the act adding this subparagraph, in
34 accordance with Section 7114 of the Government Code.

35 (9) “Minimum wage” means the wage established pursuant to
36 Chapter 1 (commencing with Section 1171) of Part 4 of Division
37 2 of the Labor Code.

38 (10) (A) “Qualified full-time employee” means an individual
39 who meets all of the following requirements:

- 1 (i) Performs at least 50 percent of his or her services for the
2 qualified taxpayer during the taxable year in a designated census
3 tract or ~~former enterprise zone~~ *economic development area*.
- 4 (ii) Receives starting wages that are at least 150 percent of the
5 minimum wage.
- 6 (iii) Is hired by the qualified taxpayer on or after January 1,
7 2014.
- 8 (iv) Is hired by the qualified taxpayer after the date the
9 Department of Finance determines that the census tract referred
10 to in clause (i) is a designated census tract or that the census tracts
11 within a former enterprise zone are not census tracts with the lowest
12 civilian unemployment and poverty.
- 13 (v) Satisfies either of the following conditions:
- 14 (I) Is paid qualified wages by the qualified taxpayer for services
15 not less than an average of 35 hours per week.
- 16 (II) Is a salaried employee and was paid compensation during
17 the taxable year for full-time employment, within the meaning of
18 Section 515 of the Labor Code, by the qualified taxpayer.
- 19 (vi) Upon commencement of employment with the qualified
20 taxpayer, satisfies any of the following conditions:
- 21 (I) Was unemployed for the six months immediately preceding
22 employment with the qualified taxpayer. In the case of an
23 individual that completed a program of study at a college,
24 university, or other postsecondary educational institution, received
25 a baccalaureate, postgraduate, or professional degree, and was
26 unemployed for the six months immediately preceding employment
27 with the qualified taxpayer, that individual must have completed
28 that program of study at least 12 months prior to the individual's
29 commencement of employment with the qualified taxpayer.
- 30 (II) Is a veteran ~~that had not been employed since separation~~
31 *who separated* from service in the Armed Forces of the United
32 States *within the 12 months preceding commencement of*
33 *employment with the qualified taxpayer*.
- 34 (III) Was a recipient of the credit allowed under Section 32 of
35 the Internal Revenue Code, relating to earned income, as applicable
36 for federal purposes, for the previous taxable year.
- 37 ~~(IV) Was an ex-offender, within the meaning of Section~~
38 ~~17053.74.~~
- 39 ~~(V) Is a recipient of CalWORKs or General Assistance.~~
- 40 (IV) *Is an ex-offender previously convicted of a felony.*

1 (V) *Is a recipient of either CalWORKs, in accordance with*
2 *Article 2 (commencing with Section 11250) of Chapter 2 of Part*
3 *3 of Division 9 of the Welfare and Institutions Code, or general*
4 *assistance, in accordance with Section 17000.5 of the Welfare and*
5 *Institutions Code.*

6 (B) An individual may be considered a qualified full-time
7 employee only for the period of time commencing with the date
8 the individual is first employed by the qualified taxpayer and
9 ending 60 months thereafter.

10 (11) (A) “Qualified taxpayer” means a person or entity engaged
11 in a trade or business within a designated census tract or ~~former~~
12 ~~enterprise zone~~ *economic development area* that, during the taxable
13 year, pays or incurs qualified wages.

14 (B) In the case of any pass-thru entity, the determination of
15 whether a taxpayer is a qualified taxpayer under this section shall
16 be made at the entity level and any credit under this section or
17 Section 23626 shall be allowed to the pass-thru entity and passed
18 through to the partners and shareholders in accordance with
19 applicable provisions of this part or Part 11 (commencing with
20 Section 23001). For purposes of this subdivision, the term
21 “pass-thru entity” means any partnership or “S” corporation.

22 (C) “Qualified taxpayers” shall not include any of the following:

23 (i) Employers that provide temporary help services, as described
24 in Code 561320 of the North American Industry Classification
25 System (NAICS) published by the United States Office of
26 Management and Budget, 2012 Edition.

27 (ii) Employers that provide retail trade services, as described
28 in Sector 44-45 of the North American Industry Classification
29 System (NAICS) published by the United States Office of
30 Management and Budget, 2012 Edition.

31 (iii) Employers that are primarily engaged in providing food
32 services, as described in Code 711110, 722511, 722513, 722514,
33 or 722515 of the North American Industry Classification System
34 (NAICS) published by the United States Office of Management
35 and Budget, 2012 edition.

36 (iv) Employers that are primarily engaged in services as
37 described in Code 713210, 721120, or 722410 of the North
38 American Industry Classification System (NAICS) published by
39 the United States Office of Management and Budget, 2012 edition.

40 (v) (I) An employer that is a sexually oriented business.

1 (II) For purposes of this clause:

2 (aa) “Sexually oriented business” means a nightclub, bar,
3 restaurant, or similar commercial enterprise that provides for an
4 audience of two or more individuals live nude entertainment or
5 live nude performances where the nudity is a function of everyday
6 business operations and where nudity is a planned and intentional
7 part of the entertainment or performance.

8 (ab) “Nude” means clothed in a manner that leaves uncovered
9 or visible, through less than fully opaque clothing, any portion of
10 the genitals or, in the case of a female, any portion of the breasts
11 below the top of the areola of the breasts.

12 (D) Subparagraph (C) shall not apply to a taxpayer that is a
13 “small business.”

14 (12) “Qualified wages” means those wages that meet all of the
15 following requirements:

16 (A) ~~That~~ (i) *Except as provided in clause (ii), that portion of*
17 *wages paid or incurred by the qualified taxpayer during the taxable*
18 *year to each qualified full-time employee that exceeds 150 percent*
19 *of minimum wage, but does not exceed 350 percent of minimum*
20 *wage.*

21 (ii) (I) *In the case of a qualified employee employed in a*
22 *designated pilot area, that portion of wages paid or incurred by*
23 *the qualified taxpayer during the taxable year to each qualified*
24 *full-time employee that exceeds ten dollars (\$10) per hour or an*
25 *equivalent amount for salaried employees.*

26 (II) For purposes of this clause:

27 (aa) “Designated pilot area” means an area designated as a
28 designated pilot area by the Governor’s Office of Business and
29 Economic Development.

30 (ab) Areas that may be designated as a designated pilot area
31 are limited to areas within a designated census tract or an
32 economic development area with average wages less than the
33 statewide average wages, based on information from the Labor
34 Market Division of the Employment Development Department,
35 and areas within a designated census tract or an economic
36 development area based on high poverty or high unemployment.

37 (ac) The total number of designated pilot areas that may be
38 designated is limited to five, one or more of which must be an area
39 within five or fewer designated census tracts within a single county
40 based on high poverty or high unemployment or an area within

1 *an economic development area based on high poverty or high*
2 *unemployment.*

3 *(ad) The designation of a designated pilot area shall be*
4 *applicable for a period of four calendar years, commencing with*
5 *the first calendar year for which the designation of a designated*
6 *pilot area is effective. The applicable period of a designated pilot*
7 *area may be extended, in the sole discretion of the Governor's*
8 *Office of Business and Economic Development, for an additional*
9 *period of up to three calendar years. The applicable period, and*
10 *any extended period, shall not extend beyond December 31, 2020.*

11 *(III) The designation of an area as a designated pilot area and*
12 *the extension of the applicable period of a designated pilot area*
13 *shall be at the sole discretion of the Governor's Office of Business*
14 *and Economic Development and shall not be subject to*
15 *administrative appeal or judicial review.*

16 (B) Wages paid or incurred during the 60-month period
17 beginning with the first day the qualified full-time employee
18 commences employment with the qualified taxpayer. In the case
19 of any employee who is reemployed, including a regularly
20 occurring seasonal increase, in the trade or business operations of
21 the qualified taxpayer, this reemployment shall not be treated as
22 constituting commencement of employment for purposes of this
23 section.

24 (C) Except as provided in paragraph (3) of subdivision (n),
25 qualified wages shall not include any wages paid or incurred by
26 the qualified taxpayer on or after the date that the Department of
27 Finance's redesignation of designated census tracts is effective,
28 as provided in paragraph (2) of subdivision (g), so that a census
29 tract is no longer a designated census tract.

30 (13) "Seasonal employment" means employment by a qualified
31 taxpayer that has regular and predictable substantial reductions in
32 trade or business operations.

33 (14) (A) "Small business" means a trade or business that has
34 aggregate gross receipts, less returns and allowances reportable to
35 this state, of less than two million dollars (\$2,000,000) during the
36 previous taxable year.

37 (B) (i) For purposes of this paragraph, "gross receipts, less
38 returns and allowances reportable to this state," means the sum of
39 the gross receipts from the production of business income, as
40 defined in subdivision (a) of Section 25120, and the gross receipts

1 from the production of nonbusiness income, as defined in
2 subdivision (d) of Section 25120.

3 (ii) In the case of any trade or business activity conducted by a
4 partnership or an “S” corporation, the limitations set forth in
5 subparagraph (A) shall be applied to the partnership or “S”
6 corporation and to each partner or shareholder.

7 (C) (i) “Small business” shall not include a sexually oriented
8 business.

9 (ii) For purposes of this subparagraph:

10 (I) “Sexually oriented business” means a nightclub, bar,
11 restaurant, or similar commercial enterprise that provides for an
12 audience of two or more individuals live nude entertainment or
13 live nude performances where the nudity is a function of everyday
14 business operations and where nudity is a planned and intentional
15 part of the entertainment or performance.

16 (II) “Nude” means clothed in a manner that leaves uncovered
17 or visible, through less than fully opaque clothing, any portion of
18 the genitals or, in the case of a female, any portion of the breasts
19 below the top of the areola of the breasts.

20 (15) An individual is “unemployed” for any period for which
21 the individual is all of the following:

22 (A) Not in receipt of wages subject to withholding under Section
23 13020 of the Unemployment Insurance Code for that period.

24 (B) Not a self-employed individual (within the meaning of
25 Section 401(c)(1)(B) of the Internal Revenue Code, relating to
26 self-employed individual) for that period.

27 (C) Not a registered full-time student at a high school, college,
28 university, or other postsecondary educational institution for that
29 period.

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

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

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

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

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

7 (d) For purposes of this section:

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

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

15 (e) (1) To be eligible for the credit allowed by this section, a
16 qualified taxpayer shall, upon hiring a qualified full-time employee,
17 request a tentative credit reservation from the Franchise Tax Board
18 within 30 days of complying with the Employment Development
19 Department's new hire reporting requirements as provided in
20 Section 1088.5 of the Unemployment Insurance Code, in the form
21 and manner prescribed by the Franchise Tax Board.

22 (2) To obtain a tentative credit reservation with respect to a
23 qualified full-time employee, the qualified taxpayer shall provide
24 necessary information, as determined by the Franchise Tax Board,
25 including the name, social security number, the start date of
26 employment, the rate of pay of the qualified full-time employee,
27 the qualified taxpayer's gross receipts, less returns and allowances,
28 for the previous taxable year, and whether the qualified full-time
29 employee is a resident of a targeted employment area, as defined
30 in former Section 7072 of the Government Code, as in effect on
31 December 31, 2013.

32 (3) The qualified taxpayer shall provide the Franchise Tax Board
33 an annual certification of employment with respect to each
34 qualified full-time employee hired in a previous taxable year, on
35 or before, the 15th day of the third month of the taxable year. The
36 certification shall include necessary information, as determined
37 by the Franchise Tax Board, including the name, social security
38 number, start date of employment, and rate of pay for each qualified
39 full-time employee employed by the qualified taxpayer.

1 (4) A tentative credit reservation provided to a taxpayer with
2 respect to an employee of that taxpayer shall not constitute a
3 determination by the Franchise Tax Board with respect to any of
4 the requirements of this section regarding a taxpayer’s eligibility
5 for the credit authorized by this section.

6 (f) The Franchise Tax Board shall do all of the following:

7 (1) Approve a tentative credit reservation with respect to a
8 qualified full-time employee hired during a calendar year.

9 (2) Determine the aggregate tentative reservation amount and
10 the aggregate small business tentative reservation amount for a
11 calendar year.

12 (3) A tentative credit reservation request from a qualified
13 taxpayer with respect to a qualified full-time employee who is a
14 resident of a targeted employment area, as defined in former
15 Section 7072 of the Government Code, as in effect on December
16 31, 2013, shall be expeditiously processed by the Franchise Tax
17 Board. The residence of a qualified full-time employee in a targeted
18 employment area shall have no other effect on the eligibility of an
19 individual as a qualified full-time employee or the eligibility of a
20 qualified taxpayer for the credit authorized by this section.

21 (4) Notwithstanding Section 19542, provide as a searchable
22 database on its Internet Web site, for each taxable year beginning
23 on or after January 1, 2014, and before January 1, 2021, the
24 employer names, amounts of tax credit claimed, and number of
25 new jobs created for each taxable year pursuant to this section and
26 Section 23626.

27 (g) (1) The Department of Finance shall, by January 1, 2014,
28 and by January 1 of every fifth year thereafter, provide the
29 Franchise Tax Board with a list of the designated census tracts and
30 a list of census tracts with the lowest civilian unemployment rate.

31 (2) The redesignation of designated census tracts and lowest
32 civilian unemployment census tracts by the Department of Finance
33 as provided in Section 13073.5 of the Government Code shall be
34 effective, for purposes of this credit, one year after the date the
35 Department of Finance redesignates the designated census tracts.

36 (h) For purposes of this section:

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

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

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

9 (4) Principles that apply in the case of controlled groups of
10 corporations, as specified in subdivision (h) of Section 23626,
11 shall apply with respect to determining employment.

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

21 (i) (1) If the employment of any qualified full-time employee,
22 with respect to whom qualified wages are taken into account under
23 subdivision (a), is terminated by the qualified taxpayer at any time
24 during the first 36 months after commencing employment with
25 the qualified taxpayer, whether or not consecutive, the tax imposed
26 by this part for the taxable year in which that employment is
27 terminated shall be increased by an amount equal to the credit
28 allowed under subdivision (a) for that taxable year and all prior
29 taxable years attributable to qualified wages paid or incurred with
30 respect to that employee.

31 (2) Paragraph (1) shall not apply to any of the following:

32 (A) A termination of employment of a qualified full-time
33 employee who voluntarily leaves the employment of the qualified
34 taxpayer.

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

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

5 (D) A termination of employment of a qualified full-time
6 employee due to a substantial reduction in the trade or business
7 operations of the qualified taxpayer, including reductions due to
8 seasonal employment.

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

13 (F) A termination of employment of a qualified full-time
14 employee, when that employment is considered seasonal
15 employment and the qualified employee is rehired on a seasonal
16 basis.

17 (3) For purposes of paragraph (1), the employment relationship
18 between the qualified taxpayer and a qualified full-time employee
19 shall not be treated as terminated by reason of a mere change in
20 the form of conducting the trade or business of the qualified
21 taxpayer, if the qualified full-time employee continues to be
22 employed in that trade or business and the qualified taxpayer retains
23 a substantial interest in that trade or business.

24 (4) Any increase in tax under paragraph (1) shall not be treated
25 as tax imposed by this part for purposes of determining the amount
26 of any credit allowable under this part.

27 (j) In the case of an estate or trust, both of the following apply:

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

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

34 (k) In the case where the credit allowed by this section exceeds
35 the “net tax,” the excess may be carried over to reduce the “net
36 tax” in the following year, and the succeeding four years if
37 necessary, until the credit is exhausted.

38 (l) The Franchise Tax Board may prescribe rules, guidelines,
39 or procedures necessary or appropriate to carry out the purposes
40 of this section, including any guidelines regarding the allocation

1 of the credit allowed under this section. Chapter 3.5 (commencing
2 with Section 11340) of Part 1 of Division 3 of Title 2 of the
3 Government Code shall not apply to any rule, guideline, or
4 procedure prescribed by the Franchise Tax Board pursuant to this
5 section.

6 (m) (1) Upon the effective date of this section, the Department
7 of Finance shall estimate the total dollar amount of credits that
8 will be claimed under this section with respect to each fiscal year
9 from the 2013–14 fiscal year to the 2020–21 fiscal year, inclusive.

10 (2) The Franchise Tax Board shall annually provide to the Joint
11 Legislative Budget Committee, by no later than March 1, a report
12 of the total dollar amount of the credits claimed under this section
13 with respect to the relevant fiscal year. The report shall compare
14 the total dollar amount of credits claimed under this section with
15 respect to that fiscal year with the department’s estimate with
16 respect to that same fiscal year. If the total dollar amount of credits
17 claimed for the fiscal year is less than the estimate for that fiscal
18 year, the report shall identify options for increasing annual claims
19 of the credit so as to meet estimated amounts.

20 (n) (1) This section shall remain in effect only until December
21 1, 2024, and as of that date is repealed.

22 (2) Notwithstanding paragraph (1) of subdivision (a), this section
23 shall continue to be operative for taxable years beginning on or
24 after January 1, 2021, but only with respect to qualified full-time
25 employees who commenced employment with a qualified taxpayer
26 in a designated census tract or ~~former enterprise zone~~ *economic*
27 *development area* in a taxable year beginning before January 1,
28 2021.

29 (3) This section shall remain operative for any qualified taxpayer
30 with respect to any qualified full-time employee after the
31 designated census tract is no longer designated or ~~a former~~
32 ~~enterprise zone~~ *an economic development area* ceases to be a
33 ~~former enterprise zone~~ *an economic development area*, as defined
34 in this section, for the remaining period, if any, of the 60-month
35 period after the original date of hiring of an otherwise qualified
36 full-time employee and any wages paid or incurred with respect
37 to those qualified full-time employees after the designated census
38 tract is no longer designated or ~~a former enterprise zone~~ *an*
39 *economic development area* ceases to be a ~~former enterprise zone~~
40 *an economic development area*, as defined in this section, shall be

1 treated as qualified wages under this section, provided the
2 employee satisfies any other requirements of paragraphs (10) and
3 (12) of subdivision (b), as if the designated census tract was still
4 designated and binding *or the economic development area was*
5 *still in existence.*

6 *SEC. 3. Section 17059.2 of the Revenue and Taxation Code,*
7 *as added by Section 18 of Assembly Bill 93 of the 2013-14 Regular*
8 *Session, is amended to read:*

9 17059.2. (a) (1) For each taxable year beginning on and after
10 January 1, 2014, and before January 1, 2025, there shall be allowed
11 as a credit against the “net tax,” as defined in Section 17039, an
12 amount as determined by the committee pursuant to paragraph (2)
13 and approved pursuant to Section 18410.2.

14 (2) *The credit under this section shall be allocated by GO-Biz*
15 *with respect to the 2013–14 fiscal year through and including the*
16 *2017–18 fiscal year. The amount of credit allocated to a taxpayer*
17 *for a taxable with respect to a fiscal year pursuant to this section*
18 *shall be as set forth in a written agreement between GO-Biz and*
19 *the taxpayer and shall be based on the following factors:*

20 (A) The number of jobs the taxpayer will create or retain in this
21 state.

22 (B) The compensation paid or proposed to be paid by the
23 taxpayer to its employees, including wages and fringe benefits.

24 (C) The amount of investment in this state by the taxpayer.

25 (D) The extent of unemployment or poverty in the area
26 according to the United States Census in which the taxpayer’s
27 project or business is proposed or located.

28 (E) The incentives available to the taxpayer in this state,
29 including incentives from the state, local government, and other
30 entities.

31 (F) The incentives available to the taxpayer in other states.

32 (G) The duration of the proposed project and the duration the
33 taxpayer commits to remain in this state.

34 (H) The overall economic impact in this state of the taxpayer’s
35 project or business.

36 (I) The strategic importance of the taxpayer’s project or business
37 to the state, region, or locality.

38 (J) The opportunity for future growth and expansion in this state
39 by the taxpayer’s business.

1 (K) The extent to which the anticipated benefit to the state
2 exceeds the projected benefit to the taxpayer from the tax credit.

3 (3) The written agreement entered into pursuant to paragraph
4 (2) shall include:

5 (A) Terms and conditions that include *the taxable year or years*
6 *for which the credit allocated shall be allowed*, a minimum
7 compensation level, and a minimum job retention period.

8 (B) Provisions indicating whether the credit is to be allocated
9 in full upon approval or in increments based on mutually agreed
10 upon milestones when satisfactorily met by the taxpayer.

11 (C) Provisions that allow the committee to recapture the credit,
12 in whole or in part, if the taxpayer fails to fulfill the terms and
13 conditions of the written agreement.

14 (b) For purposes of this section:

15 (1) “Committee” means the California Competes Tax Credit
16 Committee established pursuant to Section 18410.2.

17 (2) “GO-Biz” means the Governor’s Office of Business and
18 Economic Development.

19 (c) For purposes of this section, GO-Biz shall do the following:

20 (1) Give priority to a taxpayer whose project or business is
21 located or proposed to be located in an area of high unemployment
22 or poverty.

23 (2) Negotiate with a taxpayer the terms and conditions of
24 proposed written agreements that provide the credit allowed
25 pursuant to this section to a taxpayer.

26 (3) Provide the negotiated written agreement to the committee
27 for its approval pursuant to Section 18410.2.

28 (4) Inform the Franchise Tax Board of the terms and conditions
29 of the written agreement upon approval of the written agreement
30 by the committee.

31 (5) Inform the Franchise Tax Board of any recapture, in whole
32 or in part, of a previously allocated credit upon approval of the
33 recapture by the committee.

34 (6) Post on its Internet Web site all of the following:

35 (A) The name of each taxpayer allocated a credit pursuant to
36 this section.

37 (B) The estimated amount of the investment by each taxpayer.

38 (C) The estimated number of jobs created or retained.

39 (D) The amount of the credit allocated to the taxpayer.

1 (E) The amount of the credit recaptured from the taxpayer, if
2 applicable.

3 (d) For purposes of this section, the Franchise Tax Board shall
4 do all of the following:

5 (1) (A) Except as provided in subparagraph (B), review the
6 books and records of all taxpayers allocated a credit pursuant to
7 this section to ensure compliance with the terms and conditions
8 of the written agreement between the taxpayer and GO-Biz.

9 (B) In the case of a taxpayer that is a “small business,” as
10 defined in Section 17053.73, review the books and records of the
11 taxpayer allocated a credit pursuant to this section to ensure
12 compliance with the terms and conditions of the written agreement
13 between the taxpayer and GO-Biz when, in the sole discretion of
14 the Franchise Tax Board, a review of those books and records is
15 appropriate or necessary in the best interests of the state.

16 (2) Notwithstanding Section 19542:

17 (A) Notify GO-Biz of a possible breach of the written agreement
18 by a taxpayer and provide detailed information regarding the basis
19 for that determination.

20 (B) Provide information to GO-Biz with respect to whether a
21 taxpayer is a “small business,” as defined in Section 17053.73.

22 (e) In the case where the credit allowed under this section
23 exceeds the “net tax,” as defined in Section 17039, for a taxable
24 year, the excess credit may be carried over to reduce the “net tax”
25 in the following taxable year, and succeeding five taxable years,
26 if necessary, until the credit has been exhausted.

27 (f) Any recapture, in whole or in part, of a credit approved by
28 the committee pursuant to Section 18410.2 shall be treated as a
29 mathematical error appearing on the return. Any amount of tax
30 resulting from that recapture shall be assessed by the Franchise
31 Tax Board in the same manner as provided by Section 19051. The
32 amount of tax resulting from the recapture shall be added to the
33 tax otherwise due by the taxpayer for the taxable year in which
34 the committee’s recapture determination occurred.

35 (g) (1) The aggregate amount of credit that may be allocated
36 in any fiscal year pursuant to this section and Section 23689 shall
37 be an amount equal to the sum of subparagraphs (A), (B), and (C),
38 less the amount specified in subparagraph (D):

39 (A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal
40 year, one hundred fifty million dollars (\$150,000,000) for the

1 2014–15 fiscal year, and two hundred million dollars
2 (\$200,000,000) for each fiscal year from 2015–16 to ~~2018–19~~
3 ~~2017–18~~, inclusive.

4 (B) The unallocated credit amount, if any, from the preceding
5 fiscal year.

6 (C) The amount of any previously allocated credits that have
7 been recaptured.

8 (D) The amount estimated by the Director of Finance, in
9 consultation with the Franchise Tax Board and the State Board of
10 Equalization, to be necessary to limit the aggregation of the
11 estimated amount of exemptions claimed pursuant to Section
12 6377.1 and of the amounts estimated to be claimed pursuant to
13 this section and Sections 17053.73, 23626, and 23689 to no more
14 than seven hundred fifty million dollars (\$750,000,000) for either
15 the current fiscal year or ~~for any of the three succeeding fiscal~~
16 ~~years~~ *the next fiscal year*.

17 (i) The Director of Finance shall notify the Chairperson of the
18 Joint Legislative Budget Committee of the estimated annual
19 allocation authorized by this paragraph. Any allocation pursuant
20 to these provisions shall be made no sooner than 30 days after
21 written notification has been provided to the Chairperson of the
22 Joint Legislative Budget Committee and the chairpersons of the
23 committees of each house of the Legislature that consider
24 appropriation, or not sooner than whatever lesser time the
25 Chairperson of the Joint Legislative Budget Committee, or his or
26 her designee, may determine.

27 (ii) In no event shall the amount estimated in this subparagraph
28 be less than zero dollars (\$0).

29 (2) Each fiscal year, 25 percent of the aggregate amount of the
30 credit that may be allocated pursuant to this section and Section
31 23689 shall be reserved for small business, as defined in Section
32 17053.73 or 23626.

33 (3) Each fiscal year, no more than 20 percent of the aggregate
34 amount of the credit that may be allocated pursuant to this section
35 shall be allocated to any one taxpayer.

36 (h) GO-Biz may prescribe rules and regulations as necessary to
37 carry out the purposes of this section. Any rule or regulation
38 prescribed pursuant to this section may be by adoption of an
39 emergency regulation in accordance with Chapter 3.5 (commencing

1 with Section 11340) of Part 1 of Division 3 of Title 2 of the
2 Government Code.

3 (i) A written agreement between GO-Biz and a taxpayer with
4 respect to the credit authorized by this section shall comply with
5 existing law on the date the agreement is executed.

6 (j) (1) Upon the effective date of this section, the Department
7 of Finance shall estimate the total dollar amount of credits that
8 will be claimed under this section with respect to each fiscal year
9 from the 2013–14 fiscal year to the 2024–25 fiscal year, inclusive.

10 (2) The Franchise Tax Board shall annually provide to the Joint
11 Legislative Budget Committee, by no later than March 1, a report
12 of the total dollar amount of the credits claimed under this section
13 with respect to the relevant fiscal year. The report shall compare
14 the total dollar amount of credits claimed under this section with
15 respect to that fiscal year with the department’s estimate with
16 respect to that same fiscal year. If the total dollar amount of credits
17 claimed for the fiscal year is less than the estimate for that fiscal
18 year, the report shall identify options for increasing annual claims
19 of the credit so as to meet estimated amounts.

20 (k) This section is repealed on December 1, 2025.

21 ~~SEC. 2.~~

22 *SEC. 4.* Section 23626 of the Revenue and Taxation Code, as
23 added by Section 33 of Assembly Bill 93 of the 2013-14 Regular
24 Session, is amended to read:

25 23626. (a) (1) For each taxable year beginning on or after
26 January 1, 2014, and before January 1, 2021, there shall be allowed
27 to a qualified taxpayer that hires a qualified full-time employee
28 and pays or incurs qualified wages attributable to work performed
29 by the qualified full-time employee in a designated census tract
30 or ~~former enterprise zone~~ *economic development area*, and that
31 receives a tentative credit reservation for that qualified full-time
32 employee, a credit against the “tax,” as defined by Section 23036,
33 in an amount calculated under this section.

34 (2) The amount of the credit allowable under this section for a
35 taxable year shall be equal to the product of the tentative credit
36 amount for the taxable year and the applicable percentage for the
37 taxable year.

38 (3) (A) If a qualified taxpayer relocates to a designated census
39 tract or ~~former enterprise zone~~ *economic development area*, the
40 qualified taxpayer shall be allowed a credit with respect to qualified

1 wages for each qualified full-time employee who is employed
2 within the new location only if the qualified taxpayer provides
3 each employee at the previous location or locations a written offer
4 of employment at the new location in the designated census tract
5 or ~~former enterprise zone~~ *economic development area* with
6 comparable compensation.

7 (B) For purposes of this paragraph, “relocates to a designated
8 census tract or ~~former enterprise zone~~” *economic development*
9 *area*” means an increase in the number of qualified full-time
10 employees, employed by a qualified taxpayer, within a designated
11 census tract or tracts or ~~former enterprise zones~~ *economic*
12 *development areas* within a 12-month period in which there is a
13 decrease in the number of full-time employees, employed by the
14 qualified taxpayer in this state, but outside of designated census
15 tracts or ~~former enterprise zone~~ *economic development areas*.

16 (C) This paragraph shall not apply to a small business.

17 (4) The credit allowed by this section may only be claimed on
18 a timely filed original return of the qualified taxpayer and only
19 with respect to a qualified full-time employee for whom the
20 qualified taxpayer has received a tentative credit reservation.

21 (b) For purposes of this section:

22 (1) The “tentative credit amount” for a taxable year shall be
23 equal to the product of the applicable credit percentage for each
24 qualified full-time employee and the qualified wages paid by the
25 qualified taxpayer during the taxable year to that qualified full-time
26 employee.

27 (2) The “applicable percentage” for a taxable year shall be equal
28 to a fraction, the numerator of which is the net increase in the total
29 number of full-time employees employed in this state during the
30 taxable year, determined on an annual full-time equivalent basis,
31 as compared with the total number of full-time employees
32 employed in this state during the base year, determined on the
33 same basis, and the denominator of which shall be the total number
34 of qualified full-time employees employed in this state during the
35 taxable year. The applicable percentage shall not exceed 100
36 percent.

37 (3) The “applicable credit percentage” means the credit
38 percentage for the calendar year during which a qualified full-time
39 employee was first employed by the qualified taxpayer. The

1 applicable credit percentage for all calendar years shall be 35
2 percent.

3 (4) “Base year” means the 2013 taxable year, or in the case of
4 a qualified taxpayer who first hires a qualified full-time employee
5 in a taxable year beginning on or after January 2015, the taxable
6 year immediately preceding the taxable year in which the qualified
7 full-time employee was hired.

8 (5) “Acquired” includes any gift, inheritance, transfer incident
9 to divorce, or any other transfer, whether or not for consideration.

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

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

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

18 (7) “Designated census tract” means a census tract within the
19 state that is determined by the Department of Finance to have a
20 civilian unemployment rate that is within the top 25 percent of all
21 census tracts within the state and has a poverty rate within the top
22 25 percent of all census tracts within the state, as prescribed in
23 Section 13073.5 of the Government Code.

24 ~~(8) “Former enterprise zone” means an enterprise zone~~
25 ~~designated as of December 31, 2011, and any expansion of an~~
26 ~~enterprise zone prior to December 31, 2012, under former Chapter~~
27 ~~12.8 (commencing with former Section 7070) of Division 7 of~~
28 ~~Title 1 of the Government Code, as in effect on December 31,~~
29 ~~2012, excluding any census tract within an enterprise zone that is~~
30 ~~identified by the Department of Finance pursuant to Section~~
31 ~~13073.5 of the Government Code as a census tract within the lowest~~
32 ~~quartile of census tracts with the lowest civilian unemployment~~
33 ~~and poverty.~~

34 (8) “Economic development area” means either of the following:

35 (A) A former enterprise zone. For purposes of this section,
36 “former enterprise zone” means an enterprise zone designated
37 and in effect as of December 31, 2011, any enterprise zone
38 designated during 2012, and any revision of an enterprise zone
39 prior to June 30, 2013, under former Chapter 12.8 (commencing
40 with Section 7070) of Division 7 of Title 1 of the Government Code,

1 *as in effect on December 31, 2012, excluding any census tract*
2 *within an enterprise zone that is identified by the Department of*
3 *Finance pursuant to Section 13073.5 of the Government Code as*
4 *a census tract within the lowest quartile of census tracts with the*
5 *lowest civilian unemployment and poverty.*

6 (B) *A local agency military base recovery area designated as*
7 *of the effective date of the act adding this subparagraph, in*
8 *accordance with Section 7114 of the Government Code.*

9 (9) “Minimum wage” means the wage established pursuant to
10 Chapter 1 (commencing with Section 1171) of Part 4 of Division
11 2 of the Labor Code.

12 (10) (A) “Qualified full-time employee” means an individual
13 who meets all of the following requirements:

14 (i) Performs at least 50 percent of his or her services for the
15 qualified taxpayer during the taxable year in a designated census
16 tract or ~~former enterprise zone~~ *economic development area.*

17 (ii) Receives starting wages that are at least 150 percent of the
18 minimum wage.

19 (iii) Is hired by the qualified taxpayer on or after January 1,
20 2014.

21 (iv) Is hired by the qualified taxpayer after the date the
22 Department of Finance determines that the census tract referred
23 to in clause (i) is a designated census tract or that the census tracts
24 within a former enterprise zone are not census tracts with the lowest
25 civilian unemployment and poverty.

26 (v) Satisfies either of the following conditions:

27 (I) Is paid qualified wages by the qualified taxpayer for services
28 not less than an average of 35 hours per week.

29 (II) Is a salaried employee and was paid compensation during
30 the taxable year for full-time employment, within the meaning of
31 Section 515 of the Labor Code, by the qualified taxpayer.

32 (vi) Upon commencement of employment with the qualified
33 taxpayer, satisfies any of the following conditions:

34 (I) Was unemployed for the six months immediately preceding
35 employment with the qualified taxpayer. In the case of an
36 individual who completed a program of study at a college,
37 university, or other postsecondary educational institution, received
38 a baccalaureate, postgraduate, or professional degree, and was
39 unemployed for the six months immediately preceding employment
40 with the qualified taxpayer, that individual must have completed

1 that program of study at least 12 months prior to the individual's
2 commencement of employment with the qualified taxpayer.

3 (II) Is a veteran ~~that had not been employed since separation~~
4 *who separated* from service in the Armed Forces of the United
5 States *within the 12 months preceding commencement of*
6 *employment with the qualified taxpayer.*

7 (III) Was a recipient of the credit allowed under Section 32 of
8 the Internal Revenue Code, relating to earned income, as applicable
9 for federal purposes, for the previous taxable year.

10 ~~(IV) Was an ex-offender, within the meaning of Section 23622.7.~~

11 ~~(V) Is a recipient of CalWORKs or General Assistance.~~

12 ~~(IV) Is an ex-offender previously convicted of a felony.~~

13 ~~(V) Is a recipient of either CalWORKs, in accordance with~~
14 ~~Article 2 (commencing with Section 11250) of Chapter 2 of Part~~
15 ~~3 of Division 9 of the Welfare and Institutions Code, or general~~
16 ~~assistance, in accordance with Section 17000.5 of the Welfare and~~
17 ~~Institutions Code.~~

18 (B) An individual may only be considered a qualified full-time
19 employee for the period of time commencing with the date the
20 individual is first employed by the qualified taxpayer and ending
21 60 months thereafter.

22 (11) (A) "Qualified taxpayer" means a corporation engaged in
23 a trade or business within designated census tract or ~~former~~
24 ~~enterprise zone~~ *economic development area* that, during the taxable
25 year, pays or incurs qualified wages.

26 (B) In the case of any pass-thru entity, the determination of
27 whether a taxpayer is a qualified taxpayer under this section shall
28 be made at the entity level and any credit under this section or
29 Section 17053.73 shall be allowed to the pass-thru entity and
30 passed through to the partners and shareholders in accordance with
31 applicable provisions of this part or Part 10 (commencing with
32 Section 17001). For purposes of this subdivision, the term
33 "pass-thru entity" means any partnership or "S" corporation.

34 (C) "Qualified taxpayer" shall not include any of the following:

35 (i) Employers that provide temporary help services, as described
36 in Code 561320 of the North American Industry Classification
37 System (NAICS) published by the United States Office of
38 Management and Budget, 2012 edition.

39 (ii) Employers that provide retail trade services, as described
40 in Sector 44-45 of the North American Industry Classification

1 System (NAICS) published by the United States Office of
2 Management and Budget, 2012 edition.

3 (iii) Employers that are primarily engaged in providing food
4 services, as described in Code 711110, 722511, 722513, 722514,
5 or 722515 of the North American Industry Classification System
6 (NAICS) published by the United States Office of Management
7 and Budget, 2012 edition.

8 (iv) Employers that are primarily engaged in services as
9 described in Code 713210, 721120, or 722410 of the North
10 American Industry Classification System (NAICS) published by
11 the United States Office of Management and Budget, 2012 edition.

12 (v) (I) An employer that is a sexually oriented business.

13 (II) For purposes of this clause:

14 (aa) “Sexually oriented business” means a nightclub, bar,
15 restaurant, or similar commercial enterprise that provides for an
16 audience of two or more individuals live nude entertainment or
17 live nude performances where the nudity is a function of everyday
18 business operations and where nudity is a planned and intentional
19 part of the entertainment or performance.

20 (ab) “Nude” means clothed in a manner that leaves uncovered
21 or visible, through less than fully opaque clothing, any portion of
22 the genitals or, in the case of a female, any portion of the breasts
23 below the top of the areola of the breasts.

24 (D) Subparagraph (C) shall not apply to a taxpayer that is a
25 “small business.”

26 (12) “Qualified wages” means those wages that meet all of the
27 following requirements:

28 (A) ~~That~~ (i) *Except as provided in clause (ii), that portion of*
29 *wages paid or incurred by the qualified taxpayer during the taxable*
30 *year to each qualified full-time employee that exceeds 150 percent*
31 *of minimum wage, but does not exceed 350 percent of the*
32 *minimum wage.*

33 (ii) (I) *In the case of a qualified employee employed in a*
34 *designated pilot area, that portion of wages paid or incurred by*
35 *the qualified taxpayer during the taxable year to each qualified*
36 *full-time employee that exceeds ten dollars (\$10) per hour or an*
37 *equivalent amount for salaried employees.*

38 (II) For purposes of this clause:

1 (aa) “Designated pilot area” means an area designated as a
2 designated pilot area by the Governor’s Office of Business and
3 Economic Development.

4 (ab) Areas that may be designated as a designated pilot area
5 are limited to areas within a designated census tract or an
6 economic development area with average wages less than the
7 statewide average wages, based on information from the Labor
8 Market Division of the Employment Development Department,
9 and areas within a designated census tract or an economic
10 development area based on high poverty or high unemployment.

11 (ac) The total number of designated pilot areas that may be
12 designated is limited to five, one or more of which must be an area
13 within five or fewer designated census tracts within a single county
14 based on high poverty or high unemployment or an area within
15 an economic development area based on high poverty or high
16 unemployment.

17 (ad) The designation of a designated pilot area shall be
18 applicable for a period of four calendar years, commencing with
19 the first calendar year for which the designation of a designated
20 pilot area is effective. The applicable period of a designated pilot
21 area may be extended, in the sole discretion of the Governor’s
22 Office of Business and Economic Development, for an additional
23 period of up to three calendar years. The applicable period, and
24 any extended period, shall not extend beyond December 31, 2020.

25 (III) The designation of an area as a designated pilot area and
26 the extension of the applicable period of a designated pilot area
27 shall be at the sole discretion of the Governor’s Office of Business
28 and Economic Development and shall not be subject to
29 administrative appeal or judicial review.

30 (B) Wages paid or incurred during the 60-month period
31 beginning with the first day the qualified full-time employee
32 commences employment with the qualified taxpayer. In the case
33 of any employee who is reemployed, including regularly occurring
34 seasonal increase, in the trade or business operations of the
35 qualified taxpayer, this reemployment shall not be treated as
36 constituting commencement of employment for purposes of this
37 section.

38 (C) Except as provided in paragraph (3) of subdivision (m),
39 qualified wages shall not include any wages paid or incurred by
40 the qualified taxpayer on or after the date that the Department of

1 Finance’s redesignation of designated census tracts is effective,
2 as provided in paragraph (2) of subdivision (g), so that a census
3 tract is no longer determined to be a designated census tract.

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

7 (14) (A) “Small business” means a trade or business that has
8 aggregate gross receipts, less returns and allowances reportable to
9 this state, of less than two million dollars (\$2,000,000) during the
10 previous taxable year.

11 (B) (i) For purposes of this paragraph, “gross receipts, less
12 returns and allowances reportable to this state,” means the sum of
13 the gross receipts from the production of business income, as
14 defined in subdivision (a) of Section 25120, and the gross receipts
15 from the production of nonbusiness income, as defined in
16 subdivision (d) of Section 25120.

17 (ii) In the case of any trade or business activity conducted by a
18 partnership or an “S” corporation, the limitations set forth in
19 subparagraph (A) shall be applied to the partnership or “S”
20 corporation and to each partner or shareholder.

21 (iii) For taxpayers that are required to be included in a combined
22 report under Section 25101 or authorized to be included in a
23 combined report under Section 25101.15, the dollar amount
24 specified in subparagraph (A) shall apply to the aggregate gross
25 receipts of all taxpayers that are required to be or authorized to be
26 included in a combined report.

27 (C) (i) “Small business” shall not include a sexually oriented
28 business.

29 (ii) For purposes of this subparagraph:

30 (I) “Sexually oriented business” means a nightclub, bar,
31 restaurant, or similar commercial enterprise that provides for an
32 audience of two or more individuals live nude entertainment or
33 live nude performances where the nudity is a function of everyday
34 business operations and where nudity is a planned and intentional
35 part of the entertainment or performance.

36 (II) “Nude” means clothed in a manner that leaves uncovered
37 or visible, through less than fully opaque clothing, any portion of
38 the genitals or, in the case of a female, any portion of the breasts
39 below the top of the areola of the breasts.

- 1 (15) An individual is “unemployed” for any period for which
2 the individual is all of the following:
- 3 (A) Not in receipt of wages subject to withholding under Section
4 13020 of the Unemployment Insurance Code for that period.
- 5 (B) Not a self-employed individual (within the meaning of
6 Section 401(c)(1)(B) of the Internal Revenue Code, relating to
7 self-employed individual) for that period.
- 8 (C) Not a registered full-time student at a high school, college,
9 university, or other postsecondary educational institution for that
10 period.
- 11 (c) The net increase in full-time employees of a qualified
12 taxpayer shall be determined as provided by this subdivision:
- 13 (1) (A) The net increase in full-time employees shall be
14 determined on an annual full-time equivalent basis by subtracting
15 from the amount determined in subparagraph (C) the amount
16 determined in subparagraph (B).
- 17 (B) The total number of full-time employees employed in the
18 base year by the taxpayer and by any trade or business acquired
19 by the taxpayer during the current taxable year.
- 20 (C) The total number of full-time employees employed in the
21 current taxable year by the taxpayer and by any trade or business
22 acquired during the current taxable year.
- 23 (2) For taxpayers who first commence doing business in this
24 state during the taxable year, the number of full-time employees
25 for the base year shall be zero.
- 26 (d) For purposes of this section:
- 27 (1) All employees of the trades or businesses that are treated as
28 related under Section 267, 318, or 707 of the Internal Revenue
29 Code shall be treated as employed by a single taxpayer.
- 30 (2) In determining whether the taxpayer has first commenced
31 doing business in this state during the taxable year, the provisions
32 of subdivision (g) of Section 24416.20, without application of
33 paragraph (7) of that subdivision, shall apply.
- 34 (e) (1) To be eligible for the credit allowed by this section, a
35 qualified taxpayer shall, upon hiring a qualified full-time employee,
36 request a tentative credit reservation from the Franchise Tax Board
37 within 30 days of complying with the Employment Development
38 Department’s new hire reporting requirement as provided in
39 Section 1088.5 of the Unemployment Insurance Code, in the form
40 and manner prescribed by the Franchise Tax Board.

1 (2) To obtain a tentative credit reservation with respect to a
2 qualified full-time employee, the qualified taxpayer shall provide
3 necessary information, as determined by the Franchise Tax Board,
4 including the name, the social security number, the start date of
5 employment, the rate of pay of the qualified full-time employee,
6 the qualified taxpayer's gross receipts, less returns and allowances,
7 for the previous taxable year, and whether the qualified full-time
8 employee is a resident of a targeted employment area, as defined
9 in former Section 7072 of the Government Code, as in effect on
10 December 31, 2013.

11 (3) The qualified taxpayer shall provide the Franchise Tax Board
12 an annual certification of employment with respect to each
13 qualified full-time employee hire in a previous taxable year, on or
14 before the 15th day of the third month of the taxable year. The
15 certification shall include necessary information, as determined
16 by the Franchise Tax Board, including the name, social security
17 number, start date of employment, and rate of pay for each qualified
18 full-time employee employed by the qualified taxpayer.

19 (4) A tentative credit reservation provided to a taxpayer with
20 respect to an employee of that taxpayer shall not constitute a
21 determination by the Franchise Tax Board with respect to any of
22 the requirements of this section regarding a taxpayer's eligibility
23 for the credit authorized by this section.

24 (f) The Franchise Tax Board shall do all of the following:

25 (1) Approve a tentative credit reservation with respect to a
26 qualified full-time employee hired during a calendar year.

27 (2) Determine the aggregate tentative reservation amount and
28 the aggregate small business tentative reservation amount for a
29 calendar year.

30 (3) A tentative credit reservation request from a qualified
31 taxpayer with respect to a qualified full-time employee who is a
32 resident of a targeted employment area, as defined in former
33 Section 7072 of the Government Code, as in effect on December
34 31, 2013, shall be expeditiously processed by the Franchise Tax
35 Board. The residence of a qualified full-time employee in a targeted
36 employment area shall have no other effect on the eligibility of an
37 individual as a qualified full-time employee or the eligibility of a
38 qualified taxpayer for the credit authorized by this section.

39 (4) Notwithstanding Section 19542, provide as a searchable
40 database on its Internet Web site, for each taxable year beginning

1 on or after January 1, 2014, and before January 1, 2021, the
2 employer names, amounts of tax credit claimed, and number of
3 new jobs created for each taxable year pursuant to this section and
4 Section 17053.73.

5 (g) (1) The Department of Finance shall, by January 1, 2014,
6 and by January 1 of every fifth year thereafter, provide the
7 Franchise Tax Board with a list of the designated census tracts and
8 a list of census tracts with the lowest civilian unemployment rate.

9 (2) The redesignation of designated census tracts and lowest
10 civilian unemployment census tracts by the Department of Finance
11 as provided in Section 13073.5 of the Government Code shall be
12 effective, for purposes of this credit, one year after the date that
13 the Department of Finance redesignates the designated census
14 tracts.

15 (h) (1) For purposes of this section:

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

19 (B) All employees of all corporations that are members of the
20 same controlled group of corporations shall be treated as employed
21 by a single qualified taxpayer.

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

26 (D) If a qualified taxpayer acquires the major portion of a trade
27 or business of another taxpayer, hereinafter in this paragraph
28 referred to as the predecessor, or the major portion of a separate
29 unit of a trade or business of a predecessor, then, for purposes of
30 applying this section for any taxable year ending after that
31 acquisition, the employment relationship between a qualified
32 full-time employee and a qualified taxpayer shall not be treated
33 as terminated if the employee continues to be employed in that
34 trade or business.

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

38 (A) “More than 50 percent” shall be substituted for “at least 80
39 percent” each place it appears in Section 1563(a)(1) of the Internal
40 Revenue Code.

1 (B) The determination shall be made without regard to
2 subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal
3 Revenue Code.

4 (3) Rules similar to the rules provided in Sections 46(e) and
5 46(h) of the Internal Revenue Code, as in effect on November 4,
6 1990, shall apply to both of the following:

7 (A) An organization to which Section 593 of the Internal
8 Revenue Code applies.

9 (B) A regulated investment company or a real estate investment
10 trust subject to taxation under this part.

11 (i) (1) If the employment of any qualified full-time employee,
12 with respect to whom qualified wages are taken into account under
13 subdivision (a), is terminated by the qualified taxpayer at any time
14 during the first 36 months after commencing employment with
15 the qualified taxpayer, whether or not consecutive, the tax imposed
16 by this part for the taxable year in which that employment is
17 terminated shall be increased by an amount equal to the credit
18 allowed under subdivision (a) for that taxable year and all prior
19 taxable years attributable to qualified wages paid or incurred with
20 respect to that employee.

21 (2) Paragraph (1) shall not apply to any of the following:

22 (A) A termination of employment of a qualified full-time
23 employee who voluntarily leaves the employment of the qualified
24 taxpayer.

25 (B) A termination of employment of a qualified full-time
26 employee who, before the close of the period referred to in
27 paragraph (1), becomes disabled and unable to perform the services
28 of that employment, unless that disability is removed before the
29 close of that period and the qualified taxpayer fails to offer
30 reemployment to that employee.

31 (C) A termination of employment of a qualified full-time
32 employee, if it is determined that the termination was due to the
33 misconduct, as defined in Sections 1256-30 to 1256-43, inclusive,
34 of Title 22 of the California Code of Regulations, of that employee.

35 (D) A termination of employment of a qualified full-time
36 employee due to a substantial reduction in the trade or business
37 operations of the qualified taxpayer, including reductions due to
38 seasonal employment.

39 (E) A termination of employment of a qualified full-time
40 employee, if that employee is replaced by other qualified full-time

1 employees so as to create a net increase in both the number of
2 employees and the hours of employment.

3 (F) A termination of employment of a qualified full-time
4 employee, when that employment is considered seasonal
5 employment and the qualified employee is rehired on a seasonal
6 basis.

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

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

17 (j) In the case where the credit allowed by this section exceeds
18 the “tax,” the excess may be carried over to reduce the “tax” in
19 the following year, and the succeeding four years if necessary,
20 until exhausted.

21 (k) The Franchise Tax Board may prescribe rules, guidelines,
22 or procedures necessary or appropriate to carry out the purposes
23 of this section, including any guidelines regarding the allocation
24 of the credit allowed under this section. Chapter 3.5 (commencing
25 with Section 11340) of Part 1 of Division 3 of Title 2 of the
26 Government Code shall not apply to any rule, guideline, or
27 procedure prescribed by the Franchise Tax Board pursuant to this
28 section.

29 (l) (1) Upon the effective date of this section, the Department
30 of Finance shall estimate the total dollar amount of credits that
31 will be claimed under this section with respect to each fiscal year
32 from the 2013–14 fiscal year to the 2020–21 fiscal year, inclusive.

33 (2) The Franchise Tax Board shall annually provide to the Joint
34 Legislative Budget Committee, by no later than March 1, a report
35 of the total dollar amount of the credits claimed under this section
36 with respect to the relevant fiscal year. The report shall compare
37 the total dollar amount of credits claimed under this section with
38 respect to that fiscal year with the department’s estimate with
39 respect to that same fiscal year. If the total dollar amount of credits
40 claimed for the fiscal year is less than the estimate for that fiscal

1 year, the report shall identify options for increasing annual claims
2 of the credit so as to meet estimated amounts.

3 (m) (1) This section shall remain in effect only until December
4 1, 2024, and as of that date is repealed.

5 (2) Notwithstanding paragraph (1) of subdivision (a), this section
6 shall continue to be operative for taxable years beginning on or
7 after January 1, 2021, but only with respect to qualified full-time
8 employees who commenced employment with a qualified taxpayer
9 in a designated census tract or ~~former enterprise zone~~ *economic*
10 *development area* in a taxable year beginning before January 1,
11 2021.

12 (3) This section shall remain operative for any qualified taxpayer
13 with respect to any qualified full-time employee after the
14 designated census tract is no longer designated or ~~a former~~
15 ~~enterprise zone~~ *an economic development area* ceases to be a
16 ~~former enterprise zone~~ *an economic development area*, as defined
17 in this section, for the remaining period, if any, of the 60-month
18 period after the original date of hiring of an otherwise qualified
19 full-time employee and any wages paid or incurred with respect
20 to those qualified full-time employees after the designated census
21 tract is no longer designated or ~~a former enterprise zone~~ *an*
22 *economic development area* ceases to be a ~~former enterprise zone,~~
23 ~~an economic development area~~, as defined in this section, shall
24 be treated as qualified wages under this section, provided the
25 employee satisfies any other requirements of paragraphs (10) and
26 (12) of subdivision (b), as if the designated census tract was still
27 designated and binding *or the economic development area was*
28 *still in existence*.

29 *SEC. 5. Section 23689 of the Revenue and Taxation Code, as*
30 *added by Section 38 of Assembly Bill 93 of the 2013-14 Regular*
31 *Session, is amended to read:*

32 23689. (a) (1) For each taxable year beginning on and after
33 January 1, 2014, and before January 1, 2025, there shall be allowed
34 as a credit against the “tax,” as defined in Section 23036, an amount
35 as determined by the committee pursuant to paragraph (2) and
36 approved pursuant to Section 18410.2.

37 (2) *The credit under this section shall be allocated by GO-Biz*
38 *with respect to the 2013–14 fiscal year through and including the*
39 *2017–18 fiscal year. The amount of credit allocated to a taxpayer*
40 *for a taxable with respect to a fiscal year pursuant to this section*

1 shall be as set forth in a written agreement between GO-Biz and
2 the taxpayer and shall be based on the following factors:

3 (A) The number of jobs the taxpayer will create or retain in this
4 state.

5 (B) The compensation paid or proposed to be paid by the
6 taxpayer to its employees, including wages and fringe benefits.

7 (C) The amount of investment in this state by the taxpayer.

8 (D) The extent of unemployment or poverty in the area
9 according to the United States Census in which the taxpayer's
10 project or business is proposed or located.

11 (E) The incentives available to the taxpayer in the state,
12 including incentives from the state, local government and other
13 entities.

14 (F) The incentives available to the taxpayer in other states.

15 (G) The duration of the proposed project and the duration the
16 taxpayer commits to remain in this state.

17 (H) The overall economic impact in this state of the taxpayer's
18 project or business.

19 (I) The strategic importance of the taxpayer's project or business
20 to the state, region, or locality.

21 (J) The opportunity for future growth and expansion in this state
22 by the taxpayer's business.

23 (K) The extent to which the anticipated benefit to the state
24 exceeds the projected benefit to the taxpayer from the tax credit.

25 (3) The written agreement entered into pursuant to paragraph
26 (2) shall include:

27 (A) Terms and conditions that include *the taxable year or years*
28 *for which the credit allocated shall be allowed*, a minimum
29 compensation level, and a minimum job retention period.

30 (B) Provisions indicating whether the credit is to be allocated
31 in full upon approval or in increments based on mutually agreed
32 upon milestones when satisfactorily met by the taxpayer.

33 (C) Provisions that allow the committee to recapture the credit,
34 in whole or in part, if the taxpayer fails to fulfill the terms and
35 conditions of the written agreement.

36 (b) For purposes of this section:

37 (1) "Committee" means the California Competes Tax Credit
38 Committee established pursuant to Section 18410.2.

39 (2) "GO-Biz" means the Governor's Office of Business and
40 Economic Development.

1 (c) For purposes of this section, GO-Biz shall do the following:

2 (1) Give priority to a taxpayer whose project or business is
3 located or proposed to be located in an area of high unemployment
4 or poverty.

5 (2) Negotiate with a taxpayer the terms and conditions of
6 proposed written agreements that provide the credit allowed
7 pursuant to this section to a taxpayer.

8 (3) Provide the negotiated written agreement to the committee
9 for its approval pursuant to Section 18410.2.

10 (4) Inform the Franchise Tax Board of the terms and conditions
11 of the written agreement upon approval of the written agreement
12 by the committee.

13 (5) Inform the Franchise Tax Board of any recapture, in whole
14 or in part, of a previously allocated credit upon approval of the
15 recapture by the committee.

16 (6) Post on its Internet Web site all of the following:

17 (A) The name of each taxpayer allocated a credit pursuant to
18 this section.

19 (B) The estimated amount of the investment by each taxpayer.

20 (C) The estimated number of jobs created or retained.

21 (D) The amount of the credit allocated to the taxpayer.

22 (E) The amount of the credit recaptured from the taxpayer, if
23 applicable.

24 (d) For purposes of this section, the Franchise Tax Board shall
25 do all of the following:

26 (1) (A) Except as provided in subparagraph (B), review the
27 books and records of all taxpayers allocated a credit pursuant to
28 this section to ensure compliance with the terms and conditions
29 of the written agreement between the taxpayer and GO-Biz.

30 (B) In the case of a taxpayer that is a “small business,” as
31 defined in Section 23626, review the books and records of the
32 taxpayer allocated a credit pursuant to this section to ensure
33 compliance with the terms and conditions of the written agreement
34 between the taxpayers and GO-Biz when, in the sole discretion of
35 the Franchise Tax Board, a review of those books and records is
36 appropriate or necessary in the best interests of the state.

37 (2) Notwithstanding Section 19542:

38 (A) Notify GO-Biz of a possible breach of the written agreement
39 by a taxpayer and provide detailed information regarding the basis
40 for that determination.

1 (B) Provide information to GO-Biz with respect to whether a
2 taxpayer is a “small business,” as defined in Section 23626.

3 (e) In the case where the credit allowed under this section
4 exceeds the “tax,” as defined in Section 23036, for a taxable year,
5 the excess credit may be carried over to reduce the “tax” in the
6 following taxable year, and succeeding five taxable years, if
7 necessary, until the credit has been exhausted.

8 (f) Any recapture, in whole or in part, of a credit approved by
9 the committee pursuant to Section 18410.2 shall be treated as a
10 mathematical error appearing on the return. Any amount of tax
11 resulting from that recapture shall be assessed by the Franchise
12 Tax Board in the same manner as provided by Section 19051. The
13 amount of tax resulting from the recapture shall be added to the
14 tax otherwise due by the taxpayer for the taxable year in which
15 the committee’s recapture determination occurred.

16 (g) (1) The aggregate amount of credit that may be allocated
17 in any fiscal year pursuant to this section and Section 17059.2 shall
18 be an amount equal to the sum of subparagraphs (A), (B), and (C),
19 less the amount specified in subparagraph (D):

20 (A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal
21 year, one hundred fifty million dollars (\$150,000,000) for the
22 2014–15 fiscal year, and two hundred million dollars
23 (\$200,000,000) for each fiscal year from 2015–16 to ~~2018–19~~
24 ~~2017–18~~, inclusive.

25 (B) The unallocated credit amount, if any, from the preceding
26 fiscal year.

27 (C) The amount of any previously allocated credits that have
28 been recaptured.

29 (D) The amount estimated by the Director of Finance, in
30 consultation with the Franchise Tax Board and the State Board of
31 Equalization, to be necessary to limit the aggregation of the
32 estimated amount of exemptions claimed pursuant to Section
33 6377.1 and of the amounts estimated to be claimed pursuant to
34 this section and Sections 17053.73, 17059.2, and 23626 to no more
35 than seven hundred fifty million dollars (\$750,000,000) for either
36 the current fiscal year or ~~for any of the three succeeding fiscal~~
37 ~~years~~ *the next fiscal year*.

38 (i) The Director of Finance shall notify the Chairperson of the
39 Joint Legislative Budget Committee of the estimated annual
40 allocation authorized by this paragraph. Any allocation pursuant

1 to these provisions shall be made no sooner than 30 days after
2 written notification has been provided to the Chairperson of the
3 Joint Legislative Budget Committee and the chairpersons of the
4 committees of each house of the Legislature that consider
5 appropriation, or not sooner than whatever lesser time the
6 Chairperson of the Joint Legislative Budget Committee, or his or
7 her designee, may determine.

8 (ii) In no event shall the amount estimated in this subparagraph
9 be less than zero dollars (\$0).

10 (2) Each fiscal year, 25 percent of the aggregate amount of the
11 credit that may be allocated pursuant to this section and Section
12 17059.2 shall be reserved for “small business,” as defined in
13 Section 17053.73 or 23626.

14 (3) Each fiscal year, no more than 20 percent of the aggregate
15 amount of the credit that shall be allocated pursuant to this section
16 may be allocated to any one taxpayer.

17 (h) GO-Biz may prescribe rules and regulations as necessary to
18 carry out the purposes of this section. Any rule or regulation
19 prescribed pursuant to this section may be by adoption of an
20 emergency regulation in accordance with Chapter 3.5 (commencing
21 with Section 11340) of Part 1 of Division 3 of Title 2 of the
22 Government Code.

23 (i) (1) A written agreement between GO-Biz and a taxpayer
24 with respect to the credit authorized by this section shall not
25 restrict, broaden, or otherwise alter the ability of the taxpayer to
26 assign that credit or any portion thereof in accordance with Section
27 23663.

28 (2) A written agreement between GO-Biz and a taxpayer with
29 respect to the credit authorized by this section must comply with
30 existing law on the date the agreement is executed.

31 (j) (1) Upon the effective date of this section, the Department
32 of Finance shall estimate the total dollar amount of credits that
33 will be claimed under this section with respect to each fiscal year
34 from the 2013–14 fiscal year to the 2024–25 fiscal year, inclusive.

35 (2) The Franchise Tax Board shall annually provide to the Joint
36 Legislative Budget Committee, by no later than March 1, a report
37 of the total dollar amount of the credits claimed under this section
38 with respect to the relevant fiscal year. The report shall compare
39 the total dollar amount of credits claimed under this section with
40 respect to that fiscal year with the department’s estimate with

1 respect to that same fiscal year. If the total dollar amount of credits
2 claimed for the fiscal year is less than the estimate for that fiscal
3 year, the report shall identify options for increasing annual claims
4 of the credit so as to meet estimated amounts.

5 (k) This section is repealed on December 1, 2025.

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

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

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

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

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

4 ~~SEC. 3.~~

5 SEC. 7. Section 1 of this bill that amends Section 6377.1 of the
6 Revenue and Taxation Code, as added by Assembly Bill 93 of the
7 2013–14 Regular Session, Section ~~1~~ 2 of this bill that amends
8 Section 17053.73 of the Revenue and Taxation Code, as added by
9 Assembly Bill 93 of the 2013–14 Regular Session, Section 3 of
10 this bill that amends Section 17059.2 of the Revenue and Taxation
11 Code, as added by Assembly Bill 93 of the 2013–14 Regular
12 Session, Section 4 of this bill that amends Section 23626 of the
13 Revenue and Taxation Code, as added by Assembly Bill 93 of the
14 2013–14 Regular Session, and Section ~~2~~ 5 of this bill that amends
15 Section ~~23626~~ 23689 of the Revenue and Taxation Code, as added
16 by Assembly Bill 93 of the 2013–14 Regular Session, shall become
17 operative only if Assembly Bill 93 of the 2013–14 Regular Session
18 is chaptered and becomes operative. The effect and operation of
19 Sections ~~1 and 2~~ 1, 2, 3, 4, and 5 of this bill are subject to Section
20 47 of Assembly Bill 93 of the 2013–14 Regular Session.

21 ~~SEC. 4.~~

22 SEC. 8. This act is an urgency statute necessary for the
23 immediate preservation of the public peace, health, or safety within
24 the meaning of Article IV of the Constitution and shall go into
25 immediate effect. The facts constituting the necessity are:

26 In order to ensure the public good by providing certainty
27 regarding the incentives available for attracting and retaining jobs
28 in economically distressed areas of the state, it is necessary that
29 this act take effect immediately.

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