AMENDED IN SENATE AUGUST 21, 2014

AMENDED IN SENATE APRIL 29, 2014

AMENDED IN SENATE APRIL 21, 2014

AMENDED IN SENATE APRIL 1, 2014

SENATE BILL No. 1372

Introduced by Senators DeSaulnier and Hancock

February 21, 2014

An act to amend ~~Section~~ *Sections 18410.2 and* 23151 of, *and to add Section 23635 to,* the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1372, as amended, DeSaulnier. Corporation taxes: tax rates: publicly held ~~corporations.~~ *corporations: credits.*

~~The~~

(1) The Corporation Tax Law imposes taxes according to or measured by net income at a rate of 8.84%, or for financial institutions, at a rate of 10.84%, as specified.

This bill would, for taxable years beginning on and after January 1, 2015, revise that rate for taxpayers that are publicly held corporations, as defined, and instead impose ~~an applicable~~ *a* tax rate from 7% to 13%, or for financial institutions, from 9% to 15%, based on the compensation ratio, as defined, of the corporation. This bill would increase the applicable tax rate by 50% for those taxpayers that have a specified decrease in full-time employees employed in the United States as compared to an increase in contracted and foreign full-time employees, as described.

(2) Existing law establishes the California Competes Tax Credit Committee, which has specified duties in regard to tax credits for economic development. Existing law establishes the Governor's Office of Business and Economic Development, also known as "GO-Biz," to, among other duties, serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth. The Corporation Tax Law allows various credits against the tax imposed by that law.

This bill, for taxable years beginning on or after January 1, 2015, would allow a credit to a qualified taxpayer, as defined, in an amount as provided in a written agreement between GO-Biz and the qualified taxpayer, agreed upon by the committee, and based on specified factors, including the number of jobs the qualified taxpayer will create or retain in the state and the amount of investment in the state by the qualified taxpayer. The bill would limit the total amount of the credit available to an amount equal to the amount of revenue generated by the application of the above-referenced tax rates on publicly held corporations. The bill would also impose various duties upon GO-Biz, including the adoption of regulations.

~~This~~

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

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

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:

SECTION 1. Section 18410.2 of the Revenue and Taxation Code is amended to read:

18410.2. (a) The California Competes Tax Credit Committee is hereby established. The committee shall consist of the Treasurer, the Director of Finance, and the Director of the Governor's Office of Business and Economic Development, who shall serve as chair of the committee, or their designated representatives, and one appointee each by the Speaker of the Assembly and the Senate Committee on Rules. A Member of the Legislature shall not be appointed.

(b) For purposes of Sections ~~17059.2 and 23689,~~ *17059.2, 23635, and 23689,* the California Competes Tax Credit Committee shall do all of the following:

(1) Approve or reject any written agreement for a tax credit allocation by resolution at a duly noticed public meeting held in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), but only after receipt of the fully executed written agreement between the taxpayer and the Governor's Office of Business and Economic Development.

(2) Approve or reject any recommendation to recapture, in whole or in part, a tax credit allocation by resolution at a duly noticed public meeting held in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), but only after receipt of the recommendation from the Governor's Office of Business and Economic Development pursuant to the terms of the fully executed written agreement.

~~SECTION 1.~~

SEC. 2. Section 23151 of the Revenue and Taxation Code is amended to read:

23151. (a) With the exception of banks and financial corporations, every corporation doing business within the limits of this state and not expressly exempted from taxation by the provisions of the Constitution of this state or by this part, shall annually pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income, to be computed at the rate of 7.6 percent upon the basis of its net income for the next preceding income year, or if greater, the minimum tax specified in Section 23153.

(b) For calendar or fiscal years ending after June 30, 1973, the rate of tax shall be 9 percent instead of 7.6 percent as provided by subdivision (a).

(c) For calendar or fiscal years ending in 1980 to 1986, inclusive, the rate of tax shall be 9.6 percent.

(d) For calendar or fiscal years ending in 1987 to 1996, inclusive, and for any income year beginning before January 1, 1997, the tax rate shall be 9.3 percent.

(e) For any income year beginning on or after January 1, 1997, the tax rate shall be 8.84 percent. The change in rate provided in this subdivision shall be made without proration otherwise required by Section 24251.

(f) (1) For the first taxable year beginning on or after January 1, 2000, the tax imposed under this section shall be the sum of both of the following:

(A) A tax according to or measured by net income, to be computed at the rate of 8.84 percent upon the basis of the net income for the next preceding income year, but not less than the minimum tax specified in Section 23153.

(B) A tax according to or measured by net income, to be computed at the rate of 8.84 percent upon the basis of the net income for the first taxable year beginning on or after January 1, 2000, but not less than the minimum tax specified in Section 23153.

(2) Except as provided in paragraph (1) and subdivision (g), for taxable years beginning on or after January 1, 2000, the tax imposed under this section shall be a tax according to or measured by net income, to be computed at the rate of 8.84 percent upon the basis of the net income for that taxable year, but not less than the minimum tax specified in Section 23153.

(g) (1) For taxable years beginning on or after January 1, 2015, the tax imposed under this section upon a publicly held corporation, as defined in Section 162(m)(2) *of the Internal Revenue Code*, relating to publicly held corporation~~, of the Internal Revenue Code,~~ shall be a tax according to or measured by net income, to be computed at the applicable tax rate upon the basis of the net income for that taxable year, as determined by paragraph (2), but not less than the minimum tax specified in Section 23153.

(2) The applicable tax rate shall be determined as follows:

If the compensation ratio is:	The applicable tax rate is:
Over zero but not over 25	7% upon the basis of net income
Over 25 but not over 50	7.5% upon the basis of net income
Over 50 but not over 100	8% upon the basis of net income
Over 100 but not over 150	9% upon the basis of net income
Over 150 but not over 200	9.5% upon the basis of net income

Over 200 but not over 250	10% upon the basis of net income
Over 250 but not over 300	11% upon the basis of net income
Over 300 but not over 400	12% upon the basis of net income
Over 400	13% upon the basis of net income

(3) For purposes of this subdivision:

(A) “Client employer” means an individual or entity that receives workers to perform labor or services within the usual course of business of the individual or entity from a labor contractor.

(B) (i) “Compensation,” in the case of employees of the taxpayer other than the chief operating officer or the highest paid employee, means wages as defined in Section 3121(a) of the Internal Revenue Code, relating to wages, paid by the taxpayer during a calendar year to employees of the taxpayer.

(ii) “Compensation,” in the case of the chief operating officer or the highest paid employee of the taxpayer, means total compensation as reported in the Summary Compensation Table reported to the United States Securities and Exchange Commission pursuant to Item 402 of Regulation S-K of the Securities and Exchange Commission.

(C) (i) “Compensation ratio” for a taxable year means a ratio where the numerator is the amount equal to the greater of the compensation of the chief operating officer or the highest paid employee of the taxpayer for the calendar year preceding the beginning of the taxable year and the denominator is the amount equal to the median compensation of all employees employed by the taxpayer, including all contracted employees under contract with the taxpayer, in the United States for the calendar year preceding the beginning of the taxable year.

(ii) For taxpayers that are required to be included in a combined report under Section 25101 or authorized to be included in a combined report under Section 25101.15, the calculation of the ratio in clause (i) shall be made by treating all taxpayers that are required to be or authorized to be included in a combined report as a single taxpayer.

(D) “Contracted employee” means an employee who works for a labor contractor.

(E) “Labor contractor” means an individual or entity that contracts with a client employer to supply workers to perform labor or services or otherwise provides workers to perform labor or services within the usual course of business for the client employer.

(4) A taxpayer subject to this subdivision shall furnish a detailed compensation report to the Franchise Tax Board with its timely filed original return.

(5) (A) If the total number of full-time employees, determined on an annual full-time equivalent basis, employed by the taxpayer in the United States for a taxable year is reduced by more than 10 percent, as compared to the total number of full-time employees, determined on an annual full-time equivalent basis, employed by the taxpayer in the United States for the preceding taxable year and the total number of contracted employees or foreign full-time employees, determined on an annual full-time equivalent basis, of the taxpayer for that taxable year has increased, as compared with the total number of contracted employees or foreign full-time employees, determined on an annual full-time equivalent basis, of the taxpayer for the preceding taxable year, then the applicable tax rate determined under paragraph (2) shall be increased by 50 percent. For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees, contracted employees, and foreign full-time employees for the immediately preceding prior taxable year shall be zero.

(B) For purposes of this paragraph:

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

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

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

(ii) "Foreign full-time employee" means a full-time employee of the taxpayer that is employed at a location other than the United States.

(iii) "Full-time employee" means an employee of the taxpayer that satisfies either of the following requirements:

(I) Is paid compensation by the taxpayer for services of not less than an average of 30 hours per week.

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

(6) The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this subdivision, including any guidelines regarding the determination of wages, average compensation, and compensation ratio. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the Franchise Tax Board pursuant to this subdivision.

SEC. 3. Section 23635 is added to the Revenue and Taxation Code, to read:

23635. (a) For each taxable year beginning on or after January 1, 2015, in taxable years in which there is a qualified amount, there shall be allowed to each qualified taxpayer a credit against the "tax," as defined in Section 23036, in an amount determined by the committee pursuant to subdivision (c) and approved pursuant to Section 18410.2.

(b) For purposes of this section:

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

(2) "Compensation ratio" shall be determined for a qualified corporation in the same manner as under Section 23151.

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

(4) "Qualified amount" means the amount equal to the amount of revenue derived by subdivision (g) of Section 23151 in excess of the revenue that would have been derived by subdivision (f) of Section 23151, as determined by the Franchise Tax Board, for the taxable year.

(5) "Qualified taxpayer" means a corporation subject to the tax imposed by subdivision (g) of Section 23151 that has a compensation ratio that is greater than zero but not more than 100.

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

(c) The amount of credit allowed to a qualified taxpayer shall be a portion of the qualified amount as set forth in a written agreement between GO-Biz and the qualified taxpayer and shall be based on the following factors:

(1) The number of jobs the qualified taxpayer will create or retain in this state.

(2) The compensation paid by the taxpayer to its employees, including wages and fringe benefits.

(3) The amount of investment in this state by the qualified taxpayer.

(4) The overall economic impact in this state of the qualified taxpayer's project or business.

(d) The written agreement entered into pursuant to subdivision (c) shall include:

(1) Verification that the taxpayer is a qualified taxpayer.

(2) The amount of credit that the qualified taxpayer is allocated.

(e) GO-Biz shall do the following:

(1) Give priority to a qualified taxpayer whose business is located in an area of high unemployment or poverty.

(2) Negotiate with a qualified taxpayer the amount of credit allowed to that qualified taxpayer based on the factors in subdivision (c).

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

(4) Inform the Franchise Tax Board of the terms of the written agreement upon approval of the written agreement by the committee.

(5) Adopt regulations as necessary or appropriate to carry out the purposes of this section.

(f) On or before January 1, 2016, and each year thereafter, the Franchise Tax Board shall provide to GO-Biz an estimate of the qualified amount.

(g) Each fiscal year, 25 percent of the qualified amount shall be reserved for small business.

(h) Each fiscal year, no more than 20 percent of the qualified amount that may be allocated pursuant to this section may be allocated to any one qualified taxpayer.

~~SEC. 2.~~

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

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