

Assembly Bill No. 428

Passed the Assembly September 9, 2015

Chief Clerk of the Assembly

Passed the Senate September 8, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Sections 17053.50 and 23650 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 428, Nazarian. Income taxes: credit: seismic retrofits.

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

This bill, for taxable years beginning on or after January 1, 2017, and before January 1, 2022, would allow a tax credit under both laws in an amount equal to 30% of the qualified costs paid or incurred by a qualified taxpayer for any seismic retrofit construction on a qualified building, as provided. The bill would require a taxpayer, in order to be eligible for the credit, to obtain 2 certifications from the appropriate jurisdiction with authority for building code enforcement of the area in which the building is located: one prior to seismic retrofit construction that certifies that the building is an at-risk property, and a second subsequent to construction that certifies that the completed construction is seismic retrofit construction, as defined, and specifies a dollar amount of qualified costs. The bill would further require the taxpayer to provide the second certification to and apply for allocation of the credit with the Franchise Tax Board, and would require the board to allocate credits on a first-come-first-served basis. The bill would provide that the credit would have an aggregate cap under both laws of \$12,000,000 for each calendar year, as provided.

Existing law requires a bill that would authorize a new credit against the tax imposed by the Personal Income Tax Law or the Corporation Tax Law to contain specific goals, purposes, and objectives that the new credit will achieve and detailed performance indicators and data collection requirements for determining whether the new credit achieves these goals, purposes, and objectives.

This bill would make findings specifying the goals, purposes, and objectives of the above-described tax credits and detailing the performance indicators and data collection requirements for

determining whether the credits meet these goals, purposes, and objectives.

This bill would take effect immediately as a tax levy.

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

SECTION 1. Section 17053.50 is added to the Revenue and Taxation Code, to read:

17053.50. (a) For taxable years beginning on or after January 1, 2017, and before January 1, 2022, there shall be allowed to a qualified taxpayer a credit against the “net tax,” as defined in Section 17039, in an amount equal to 30 percent of the qualified taxpayer’s qualified costs.

(b) For purposes of this section:

(1) “At-risk property” means a building that is deemed hazardous and in danger of collapse in the event of a catastrophic earthquake, including, but not limited to, soft story buildings, nonductile concrete residential buildings, and pre-1994 concrete residential buildings.

(2) “Qualified building” means a building that has been certified as an at-risk property pursuant to subparagraph (A) of paragraph (1) of subdivision (c). A qualified building includes a mobilehome registered by the Department of Housing and Community Development.

(3) “Qualified costs” means the costs paid or incurred by the qualified taxpayer for any completed seismic retrofit construction on a qualified building, including any engineering or architectural design work necessary to permit or complete the seismic retrofit construction less the amount of any grant provided by a public entity for the seismic retrofit construction. “Qualified costs” do not include any of the following costs paid or incurred by the qualified taxpayer:

(A) Maintenance, including abatement of deferred or inadequate maintenance, and correction of violations unrelated to the seismic retrofit construction.

(B) Repair, including repair of earthquake damage.

(C) Seismic retrofit construction required by local building codes as a result of addition, repair, building relocation, change of use, or occupancy.

(D) Other work or improvement required by local building or planning codes as a result of the intended seismic retrofit construction.

(E) Rent reductions or other associated compensation, compliance actions, or other related coordination involving the qualified taxpayer and any other party, including a tenant, insurer, or lender.

(F) Replacement of existing building components, including equipment, except as needed to complete the seismic retrofit construction.

(G) Bracing or securing nonpermanent building contents.

(H) The offset of costs, reimbursements, or other costs transferred from the qualified taxpayers to others.

(I) Any amount paid by the qualified taxpayer to the jurisdiction with authority for building code enforcement for issuing the certifications required pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (c).

(4) “Qualified taxpayer” means a taxpayer that is an owner of a qualified building located in this state. A taxpayer that owns a proportional share of a qualified building in this state may claim the credit allowed by this section based on the taxpayer’s share of the qualified costs.

(5) (A) “Seismic retrofit construction” means alteration of a qualified building or its components to substantially mitigate seismic damage. Seismic retrofit construction shall be for work performed, and for which qualified costs were paid or incurred, on or after January 1, 2017. Seismic retrofit construction shall include, but not be limited to, the following:

(i) Anchoring the structure to the foundation.

(ii) Bracing cripple walls.

(iii) Bracing hot water heaters.

(iv) Installing automatic gas shutoff valves.

(v) Repairing or reinforcing the foundation to improve the integrity of the foundation against seismic damage.

(vi) Anchoring fuel storage.

(vii) Installing an earthquake resistant bracing system for mobilehomes that are registered with the Department of Housing and Community Development.

(B) Notwithstanding subparagraph (A), seismic retrofit construction does not include construction performed to bring a building into compliance with local building codes.

(c) To be eligible for the credit, the following shall apply:

(1) The qualified taxpayer shall do all of the following:

(A) Prior to the seismic retrofit construction, obtain certification from the appropriate jurisdiction with local building code enforcement authority that the building is an at-risk property.

(B) Obtain certification from the appropriate jurisdiction with authority for building code enforcement, upon a review of the building, that the completed construction satisfies the definition of seismic retrofit construction. The certification shall identify what part of the completed construction, if any, is not seismic retrofit construction, and specify a dollar amount of qualified costs.

(C) Request and be granted an allocation of the credit from the Franchise Tax Board. To request an allocation, the taxpayer shall sign and submit to the Franchise Tax Board an application to receive a credit for the seismic retrofit construction and provide a copy of the certification obtained pursuant to subparagraph (B).

(D) Retain for his or her records a copy of the certifications specified in subparagraphs (A) and (B).

(2) The jurisdiction with authority for building code enforcement in which a qualified building is located has entered into an agreement with the state to provide certifications pursuant to this section and to not seek reimbursement pursuant to Section 6 of Article XIII B of the California Constitution for any costs incurred in providing those certifications.

(d) (1) The credit amount allowed in subdivision (a) shall be claimed by a qualified taxpayer at the rate of one-fifth of the credit amount for the taxable year in which the credit is allocated, and one-fifth of the credit amount for each of the subsequent four taxable years.

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

(e) (1) The total amount of credit that may be allocated pursuant to this section and Section 23650 shall not exceed the sum of the following:

(A) Twelve million dollars (\$12,000,000) for the 2017 calendar year and each calendar year thereafter.

(B) The amount of previously unallocated credits allowed under this section.

(2) Upon receipt of the application and certification described in subparagraph (C) of paragraph (1) of subdivision (c), the Franchise Tax Board shall notify the taxpayer of the amount, if any, of credit allowed and allocate the credit to a qualified taxpayer on a first-come-first-served basis.

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

(B) The determination of the Franchise Tax Board with respect to the allocation of the credit, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding.

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

(f) This credit shall be in lieu of any other credit or deduction that the qualified taxpayer may otherwise claim pursuant to this part with respect to qualified costs.

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

(h) This section shall remain in effect only until December 1, 2022, and as of that date is repealed.

SEC. 2. Section 23650 is added to the Revenue and Taxation Code, to read:

23650. (a) For taxable years beginning on or after January 1, 2017, and before January 1, 2022, there shall be allowed to a qualified taxpayer a credit against the “tax,” as defined in Section

23036, in an amount equal to 30 percent of the qualified taxpayer's qualified costs.

(b) For purposes of this section:

(1) "At-risk property" means a building that is deemed hazardous and in danger of collapse in the event of a catastrophic earthquake, including, but not limited to, soft story buildings, nonductile concrete residential buildings, and pre-1994 concrete residential buildings.

(2) "Qualified building" means a building that has been certified as an at-risk property pursuant to subparagraph (A) of paragraph (1) of subdivision (c). A qualified building includes a mobilehome registered by the Department of Housing and Community Development.

(3) "Qualified costs" means the costs paid or incurred by the qualified taxpayer for any completed seismic retrofit construction on a qualified building, including any engineering or architectural design work necessary to permit or complete the seismic retrofit construction less the amount of any grant provided by a public entity for the seismic retrofit construction. "Qualified costs" do not include any of the following costs paid or incurred by the qualified taxpayer:

(A) Maintenance, including abatement of deferred or inadequate maintenance, and correction of violations unrelated to the seismic retrofit construction.

(B) Repair, including repair of earthquake damage.

(C) Seismic retrofit construction required by local building codes as a result of addition, repair, building relocation, change of use, or occupancy.

(D) Other work or improvement required by local building or planning codes as a result of the intended seismic retrofit construction.

(E) Rent reductions or other associated compensation, compliance actions, or other related coordination involving the qualified taxpayer and any other party, including a tenant, insurer, or lender.

(F) Replacement of existing building components, including equipment, except as needed to complete the seismic retrofit construction.

(G) Bracing or securing nonpermanent building contents.

(H) The offset of costs, reimbursements, or other costs transferred from the qualified taxpayers to others.

(I) Any amount paid by the qualified taxpayer to the jurisdiction with authority for building code enforcement for issuing the certifications required pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (c).

(4) “Qualified taxpayer” means a taxpayer that is an owner of a qualified building located in this state. A taxpayer that owns a proportional share of a qualified building in this state may claim the credit allowed by this section based on the taxpayer’s share of the qualified costs.

(5) (A) “Seismic retrofit construction” means alteration of a qualified building or its components to substantially mitigate seismic damage. Seismic retrofit construction shall be for work performed, and for which qualified costs were paid or incurred, on or after January 1, 2017. Seismic retrofit construction shall include, but not be limited to, the following:

- (i) Anchoring the structure to the foundation.
- (ii) Bracing cripple walls.
- (iii) Bracing hot water heaters.
- (iv) Installing automatic gas shutoff valves.
- (v) Repairing or reinforcing the foundation to improve the integrity of the foundation against seismic damage.
- (vi) Anchoring fuel storage.
- (vii) Installing an earthquake resistant bracing system for mobilehomes that are registered with the Department of Housing and Community Development.

(B) Notwithstanding subparagraph (A), seismic retrofit construction does not include construction performed to bring a building into compliance with local building codes.

(c) To be eligible for the credit, the following shall apply:

(1) The qualified taxpayer shall do all of the following:

(A) Prior to the seismic retrofit construction, obtain certification from the appropriate jurisdiction with local building code enforcement authority that the building is an at-risk property.

(B) Obtain certification from the appropriate jurisdiction with authority for building code enforcement, upon a review of the building, that the completed construction satisfies the definition of seismic retrofit construction. The certification shall identify

what part of the completed construction, if any, is not seismic retrofit construction and specify a dollar amount of qualified costs.

(C) Request and be granted an allocation of the credit from the Franchise Tax Board. To request an allocation, the taxpayer shall sign and submit to the Franchise Tax Board an application to receive a credit for the seismic retrofit construction and provide a copy of the certification obtained pursuant to subparagraph (B).

(D) Retain for his or her records a copy of the certifications specified in subparagraphs (A) and (B).

(2) The jurisdiction with authority for building code enforcement in which a qualified building is located has entered into an agreement with the state to provide certifications pursuant to this section and to not seek reimbursement pursuant to Section 6 of Article XIII B of the California Constitution for any costs incurred in providing those certifications.

(d) (1) The credit amount allowed in subdivision (a) shall be claimed by a qualified taxpayer at the rate of one-fifth of the credit amount for the taxable year in which the credit is allocated, and one-fifth of the credit amount for each of the subsequent four taxable years.

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

(e) (1) The total amount of credit that may be allocated pursuant to this section and Section 17053.50 shall not exceed the sum of the following:

(A) Twelve million dollars (\$12,000,000) for the 2017 calendar year and each calendar year thereafter.

(B) The amount of previously unallocated credits allowed under this section.

(2) Upon receipt of the application and certification described in subparagraph (C) of paragraph (1) of subdivision (c), the Franchise Tax Board shall notify the taxpayer of the amount, if any, of credit allowed and allocate the credit to a qualified taxpayer on a first-come-first-served basis.

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

(B) The determination of the Franchise Tax Board with respect to the allocation of the credit, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding.

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

(f) This credit shall be in lieu of any other credit or deduction that the qualified taxpayer may otherwise claim pursuant to this part with respect to qualified costs.

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

(h) This section shall remain in effect only until December 1, 2022, and as of that date is repealed.

SEC. 3. For the purposes of complying with Section 41 of the Revenue and Taxation Code, the Legislature finds and declares all of the following with respect to Sections 17053.50 and 23650 of the Revenue and Taxation Code:

(a) The specific goals, purposes, and objectives that the tax credits will achieve are as follows:

(1) Leveraging sixty million dollars (\$60,000,000) in private investment.

(2) Creating thousands of engineering or construction jobs.

(3) Mitigating seismic damage to save lives.

(b) The detailed performance indicators for the Legislature to use when measuring whether the tax credits meet those specific goals, purposes, and objectives are as follows:

(1) The amount of private sector investment enabled by allocation of the tax credits.

(2) The number of engineering or construction jobs created as a result of this investment.

(3) The estimated number of lives saved by the seismic retrofitting of buildings facilitated by the tax credits.

(c) The data collection requirements to enable the Legislature to determine whether the tax credits are meeting, failing to meet, or exceeding those specific goals, purposes, and objectives are as follows:

(1) To assist the Legislature in measuring whether the tax credits meet the goals, purposes, and objectives specified in subdivision (a), the Legislative Analyst shall review the effectiveness of the tax credits and may request information from the Franchise Tax Board and any state governmental entity with authority relating to the seismic retrofit construction of at-risk properties.

(2) The Franchise Tax Board and any state governmental entity with authority relating to the seismic retrofit construction of at-risk properties shall provide to the Legislative Analyst any data requested by the Legislative Analyst pursuant to this subdivision.

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

Approved _____, 2015

Governor