

AMENDED IN SENATE JULY 1, 2015
AMENDED IN ASSEMBLY MAY 20, 2015
AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 931

**Introduced by Assembly Member Irwin
(Principal coauthor: Assembly Member Brough)**

February 26, 2015

An act to amend Sections 17053.73 and 23626 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 931, as amended, Irwin. Taxation: credit: hiring.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including, for taxable years beginning on or after January 1, 2014, and before January 1, 2021, a credit for hiring qualified full-time employees within specified economic development areas. Existing law defines “qualified full-time employee” to include an individual who is a veteran who separated from service in the Armed Forces of the United States within the 12 months preceding commencement of employment with the qualified taxpayer.

This bill would, under both laws for taxable years beginning on or after January 1, 2016, revise this definition of a “qualified full-time employee” to include a person who, upon commencement of employment with the qualified taxpayer, is a veteran that separated from service in the Armed Forces of the United States within the 36 months preceding commencement of employment with the qualified

~~taxpayer and was unemployed for the six months immediately preceding employment with the qualified taxpayer.~~

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 and provides that the amount available for these credits will decrease based in part, on how much credit is allowed under the hiring credit that would be expanded by this bill.

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

This bill would take effect immediately as a tax levy.

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

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

- 1 SECTION 1. Section 17053.73 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 17053.73. (a) (1) For each taxable year beginning on or after
- 4 January 1, 2014, and before January 1, 2021, there shall be allowed
- 5 to a qualified taxpayer that hires a qualified full-time employee
- 6 and pays or incurs qualified wages attributable to work performed
- 7 by the qualified full-time employee in a designated census tract
- 8 or economic development area, and that receives a tentative credit
- 9 reservation for that qualified full-time employee, a credit against
- 10 the “net tax,” as defined in Section 17039, in an amount calculated
- 11 under this section.
- 12 (2) The amount of the credit allowable under this section for a
- 13 taxable year shall be equal to the product of the tentative credit
- 14 amount for the taxable year and the applicable percentage for the
- 15 taxable year.

1 (3) (A) If a qualified taxpayer relocates to a designated census
2 tract or economic development area, the qualified taxpayer shall
3 be allowed a credit with respect to qualified wages for each
4 qualified full-time employee who is employed within the new
5 location only if the qualified taxpayer provides each employee at
6 the previous location or locations a written offer of employment
7 at the new location in the designated census tract or economic
8 development area with comparable compensation.

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

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

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

22 (b) For purposes of this section:

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

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

38 (3) The “applicable credit percentage” means the credit
39 percentage for the calendar year during which a qualified full-time
40 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, except in the case
4 of a qualified taxpayer who first hires a qualified full-time
5 employee in a taxable year beginning on or after January 1, 2015,
6 the base year means the taxable year immediately preceding the
7 taxable year in which the qualified full-time employee was first
8 hired by the qualified taxpayer.

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

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

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

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

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

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

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

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

1 (9) “Minimum wage” means the wage established pursuant to
2 Chapter 1 (commencing with Section 1171) of Part 4 of Division
3 2 of the Labor Code.

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

6 (i) Performs at least 50 percent of his or her services for the
7 qualified taxpayer during the taxable year in a designated census
8 tract or economic development area.

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

11 (iii) Is hired by the qualified taxpayer on or after January 1,
12 2014.

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

18 (v) Satisfies either of the following conditions:

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

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

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

26 (I) Was unemployed for the six months immediately preceding
27 employment with the qualified taxpayer. In the case of an
28 individual who completed a program of study at a college,
29 university, or other postsecondary educational institution, received
30 a baccalaureate, postgraduate, or professional degree, and was
31 unemployed for the six months immediately preceding employment
32 with the qualified taxpayer, that individual must have completed
33 that program of study at least 12 months prior to the individual’s
34 commencement of employment with the qualified taxpayer.

35 ~~(II) Is a veteran who separated from service in the Armed Forces~~
36 ~~of the United States within the 12 months preceding~~
37 ~~commencement of employment with the qualified taxpayer.~~

38 ~~(III) For each taxable year beginning on or after January 1, 2016,~~
39 ~~is a veteran who separated from service in the Armed Forces of~~
40 ~~the United States within the 36 months preceding commencement~~

1 of employment with the qualified taxpayer and was unemployed
2 for the six months immediately preceding employment with the
3 qualified taxpayer.

4 (II) (ia) For each taxable year beginning on or after January
5 1, 2014, and before January 1, 2016, is a veteran who separated
6 from service in the Armed Forces of the United States within the
7 12 months preceding commencement of employment with the
8 qualified taxpayer.

9 (ib) For each taxable year beginning on or after January 1,
10 2016, is a veteran who separated from service in the Armed Forces
11 of the United States within the 36 months preceding commencement
12 of employment with the qualified taxpayer.

13 ~~(IV)~~

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

17 ~~(V)~~

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

19 ~~(VI)~~

20 (V) Is a recipient of either CalWORKs, in accordance with
21 Article 2 (commencing with Section 11250) of Chapter 2 of Part
22 3 of Division 9 of the Welfare and Institutions Code, or general
23 assistance, in accordance with Section 17000.5 of the Welfare and
24 Institutions Code.

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

29 (11) (A) “Qualified taxpayer” means a person or entity engaged
30 in a trade or business within a designated census tract or economic
31 development area that, during the taxable year, pays or incurs
32 qualified wages.

33 (B) In the case of any pass-thru entity, the determination of
34 whether a taxpayer is a qualified taxpayer under this section shall
35 be made at the entity level and any credit under this section or
36 Section 23626 shall be allowed to the pass-thru entity and passed
37 through to the partners and shareholders in accordance with
38 applicable provisions of this part or Part 11 (commencing with
39 Section 23001). For purposes of this subdivision, the term
40 “pass-thru entity” means any partnership or “S” corporation.

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

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

6 (ii) Employers that provide retail trade services, as described
7 in Sector 44-45 of the North American Industry Classification
8 System (NAICS) published by the United States Office of
9 Management and Budget, 2012 edition.

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

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

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

20 (II) For purposes of this clause:

21 (ia) “Sexually oriented business” means a nightclub, bar,
22 restaurant, or similar commercial enterprise that provides for an
23 audience of two or more individuals live nude entertainment or
24 live nude performances where the nudity is a function of everyday
25 business operations and where nudity is a planned and intentional
26 part of the entertainment or performance.

27 (ib) “Nude” means clothed in a manner that leaves uncovered
28 or visible, through less than fully opaque clothing, any portion of
29 the genitals or, in the case of a female, any portion of the breasts
30 below the top of the areola of the breasts.

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

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

35 (A) (i) Except as provided in clause (ii), that portion of wages
36 paid or incurred by the qualified taxpayer during the taxable year
37 to each qualified full-time employee that exceeds 150 percent of
38 minimum wage, but does not exceed 350 percent of minimum
39 wage.

1 (ii) (I) In the case of a qualified full-time employee employed
2 in a designated pilot area, that portion of wages paid or incurred
3 by the qualified taxpayer during the taxable year to each qualified
4 full-time employee that exceeds ten dollars (\$10) per hour or an
5 equivalent amount for salaried employees, but does not exceed
6 350 percent of the minimum wage. For qualified full-time
7 employees described in the preceding sentence, clause (ii) of
8 subparagraph (A) of paragraph (10) is modified by substituting
9 “ten dollars (\$10) per hour or an equivalent amount for salaried
10 employees” for “150 percent of the minimum wage.”

11 (II) For purposes of this clause:

12 (ia) “Designated pilot area” means an area designated as a
13 designated pilot area by the Governor’s Office of Business and
14 Economic Development.

15 (ib) Areas that may be designated as a designated pilot area are
16 limited to areas within a designated census tract or an economic
17 development area with average wages less than the statewide
18 average wages, based on information from the Labor Market
19 Division of the Employment Development Department, and areas
20 within a designated census tract or an economic development area
21 based on high poverty or high unemployment.

22 (ic) The total number of designated pilot areas that may be
23 designated is limited to five, one or more of which must be an area
24 within five or fewer designated census tracts within a single county
25 based on high poverty or high unemployment or an area within an
26 economic development area based on high poverty or high
27 unemployment.

28 (id) The designation of a designated pilot area shall be applicable
29 for a period of four calendar years, commencing with the first
30 calendar year for which the designation of a designated pilot area
31 is effective. The applicable period of a designated pilot area may
32 be extended, in the sole discretion of the Governor’s Office of
33 Business and Economic Development, for an additional period of
34 up to three calendar years. The applicable period, and any extended
35 period, shall not extend beyond December 31, 2020.

36 (III) The designation of an area as a designated pilot area and
37 the extension of the applicable period of a designated pilot area
38 shall be at the sole discretion of the Governor’s Office of Business
39 and Economic Development and shall not be subject to
40 administrative appeal or judicial review.

1 (B) Wages paid or incurred during the 60-month period
2 beginning with the first day the qualified full-time employee
3 commences employment with the qualified taxpayer. In the case
4 of any employee who is reemployed, including a regularly
5 occurring seasonal increase, in the trade or business operations of
6 the qualified taxpayer, this reemployment shall not be treated as
7 constituting commencement of employment for purposes of this
8 section.

9 (C) Except as provided in paragraph (3) of subdivision (n),
10 qualified wages shall not include any wages paid or incurred by
11 the qualified taxpayer on or after the date that the Department of
12 Finance’s redesignation of designated census tracts is effective,
13 as provided in paragraph (2) of subdivision (g), so that a census
14 tract is no longer a designated census tract.

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

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

22 (B) (i) For purposes of this paragraph, “gross receipts, less
23 returns and allowances reportable to this state,” means the sum of
24 the gross receipts from the production of business income, as
25 defined in subdivision (a) of Section 25120, and the gross receipts
26 from the production of nonbusiness income, as defined in
27 subdivision (d) of Section 25120.

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

32 (C) (i) “Small business” shall not include a sexually oriented
33 business.

34 (ii) For purposes of this subparagraph:

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

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

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

7 (A) Not in receipt of wages subject to withholding under Section
8 13020 of the Unemployment Insurance Code for that period.

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

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

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

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

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

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

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

30 (d) For purposes of this section:

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

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

38 (e) (1) To be eligible for the credit allowed by this section, a
39 qualified taxpayer shall, upon hiring a qualified full-time employee,
40 request a tentative credit reservation from the Franchise Tax Board

1 within 30 days of complying with the Employment Development
2 Department's new hire reporting requirements as provided in
3 Section 1088.5 of the Unemployment Insurance Code, in the form
4 and manner prescribed by the Franchise Tax Board.

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

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

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

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

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

31 (2) Determine the aggregate tentative reservation amount and
32 the aggregate small business tentative reservation amount for a
33 calendar year.

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

1 individual as a qualified full-time employee or the eligibility of a
2 qualified taxpayer for the credit authorized by this section.

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

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

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

19 (h) For purposes of this section:

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

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

26 (3) The credit, if any, allowable by this section with respect to
27 each trade or business shall be determined by reference to its
28 proportionate share of the expense of the qualified wages giving
29 rise to the credit, and shall be allocated to that trade or business in
30 that manner.

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

34 (5) If an employer acquires the major portion of a trade or
35 business of another employer, hereinafter in this paragraph referred
36 to as the predecessor, or the major portion of a separate unit of a
37 trade or business of a predecessor, then, for purposes of applying
38 this section, other than subdivision (i), for any taxable year ending
39 after that acquisition, the employment relationship between a
40 qualified full-time employee and an employer shall not be treated

1 as terminated if the employee continues to be employed in that
2 trade or business.

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

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

14 (A) A termination of employment of a qualified full-time
15 employee who voluntarily leaves the employment of the qualified
16 taxpayer.

17 (B) A termination of employment of a qualified full-time
18 employee who, before the close of the period referred to in
19 paragraph (1), becomes disabled and unable to perform the services
20 of that employment, unless that disability is removed before the
21 close of that period and the qualified taxpayer fails to offer
22 reemployment to that employee.

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

27 (D) A termination of employment of a qualified full-time
28 employee due to a substantial reduction in the trade or business
29 operations of the qualified taxpayer, including reductions due to
30 seasonal employment.

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

35 (F) A termination of employment of a qualified full-time
36 employee, when that employment is considered seasonal
37 employment and the qualified employee is rehired on a seasonal
38 basis.

39 (3) For purposes of paragraph (1), the employment relationship
40 between the qualified taxpayer and a qualified full-time employee

1 shall not be treated as terminated by reason of a mere change in
2 the form of conducting the trade or business of the qualified
3 taxpayer, if the qualified full-time employee continues to be
4 employed in that trade or business and the qualified taxpayer retains
5 a substantial interest in that trade or business.

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

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

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

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

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

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

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

32 (2) The Franchise Tax Board shall annually provide to the Joint
33 Legislative Budget Committee, by no later than March 1, a report
34 of the total dollar amount of the credits claimed under this section
35 with respect to the relevant fiscal year. The report shall compare
36 the total dollar amount of credits claimed under this section with
37 respect to that fiscal year with the department’s estimate with
38 respect to that same fiscal year. If the total dollar amount of credits
39 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 (n) (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 economic development area in a
10 taxable year beginning before January 1, 2021.

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

26 SEC. 2. Section 23626 of the Revenue and Taxation Code is
27 amended to read:

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

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

1 (3) (A) If a qualified taxpayer relocates to a designated census
2 tract or economic development area, the qualified taxpayer shall
3 be allowed a credit with respect to qualified wages for each
4 qualified full-time employee who is employed within the new
5 location only if the qualified taxpayer provides each employee at
6 the previous location or locations a written offer of employment
7 at the new location in the designated census tract or economic
8 development area with comparable compensation.

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

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

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

22 (b) For purposes of this section:

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

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

38 (3) The “applicable credit percentage” means the credit
39 percentage for the calendar year during which a qualified full-time
40 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, except in the case
4 of a qualified taxpayer who first hires a qualified full-time
5 employee in a taxable year beginning on or after January 1, 2015,
6 the base year means the taxable year immediately preceding the
7 taxable year in which the qualified full-time employee was first
8 hired by the qualified taxpayer.

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

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

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

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

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

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

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

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

1 (9) “Minimum wage” means the wage established pursuant to
2 Chapter 1 (commencing with Section 1171) of Part 4 of Division
3 2 of the Labor Code.

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

6 (i) Performs at least 50 percent of his or her services for the
7 qualified taxpayer during the taxable year in a designated census
8 tract or economic development area.

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

11 (iii) Is hired by the qualified taxpayer on or after January 1,
12 2014.

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

18 (v) Satisfies either of the following conditions:

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

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

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

26 (I) Was unemployed for the six months immediately preceding
27 employment with the qualified taxpayer. In the case of an
28 individual who completed a program of study at a college,
29 university, or other postsecondary educational institution, received
30 a baccalaureate, postgraduate, or professional degree, and was
31 unemployed for the six months immediately preceding employment
32 with the qualified taxpayer, that individual must have completed
33 that program of study at least 12 months prior to the individual’s
34 commencement of employment with the qualified taxpayer.

35 ~~(II) Is a veteran who separated from service in the Armed Forces~~
36 ~~of the United States within the 12 months preceding~~
37 ~~commencement of employment with the qualified taxpayer.~~

38 ~~(III) For each taxable year beginning on or after January 1, 2016,~~
39 ~~is a veteran who separated from service in the Armed Forces of~~
40 ~~the United States within the 36 months preceding commencement~~

1 of employment with the qualified taxpayer and was unemployed
2 for the six months immediately preceding employment with the
3 qualified taxpayer.

4 (II) (ia) For each taxable year beginning on or after January
5 1, 2014, and before January 1, 2016, is a veteran who separated
6 from service in the Armed Forces of the United States within the
7 12 months preceding commencement of employment with the
8 qualified taxpayer.

9 (ib) For each taxable year beginning on or after January 1,
10 2016, is a veteran who separated from service in the Armed Forces
11 of the United States within the 36 months preceding commencement
12 of employment with the qualified taxpayer.

13 ~~(IV)~~

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

17 ~~(V)~~

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

19 ~~(VI)~~

20 (V) Is a recipient of either CalWORKs, in accordance with
21 Article 2 (commencing with Section 11250) of Chapter 2 of Part
22 3 of Division 9 of the Welfare and Institutions Code, or general
23 assistance, in accordance with Section 17000.5 of the Welfare and
24 Institutions Code.

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

29 (11) (A) “Qualified taxpayer” means a corporation engaged in
30 a trade or business within a designated census tract or economic
31 development area that, during the taxable year, pays or incurs
32 qualified wages.

33 (B) In the case of any pass-thru entity, the determination of
34 whether a taxpayer is a qualified taxpayer under this section shall
35 be made at the entity level and any credit under this section or
36 Section 17053.73 shall be allowed to the pass-thru entity and
37 passed through to the partners and shareholders in accordance with
38 applicable provisions of this part or Part 10 (commencing with
39 Section 17001). For purposes of this subdivision, the term
40 “pass-thru entity” means any partnership or “S” corporation.

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

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

6 (ii) Employers that provide retail trade services, as described
7 in Sector 44-45 of the North American Industry Classification
8 System (NAICS) published by the United States Office of
9 Management and Budget, 2012 edition.

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

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

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

20 (II) For purposes of this clause:

21 (ia) “Sexually oriented business” means a nightclub, bar,
22 restaurant, or similar commercial enterprise that provides for an
23 audience of two or more individuals live nude entertainment or
24 live nude performances where the nudity is a function of everyday
25 business operations and where nudity is a planned and intentional
26 part of the entertainment or performance.

27 (ib) “Nude” means clothed in a manner that leaves uncovered
28 or visible, through less than fully opaque clothing, any portion of
29 the genitals or, in the case of a female, any portion of the breasts
30 below the top of the areola of the breasts.

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

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

35 (A) (i) Except as provided in clause (ii), that portion of wages
36 paid or incurred by the qualified taxpayer during the taxable year
37 to each qualified full-time employee that exceeds 150 percent of
38 the minimum wage, but does not exceed 350 percent of the
39 minimum wage.

1 (ii) (I) In the case of a qualified full-time employee employed
2 in a designated pilot area, that portion of wages paid or incurred
3 by the qualified taxpayer during the taxable year to each qualified
4 full-time employee that exceeds ten dollars (\$10) per hour or an
5 equivalent amount for salaried employees, but does not exceed
6 350 percent of the minimum wage. For qualified full-time
7 employees described in the preceding sentence, clause (ii) of
8 subparagraph (A) of paragraph (10) is modified by substituting
9 “ten dollars (\$10) per hour or an equivalent amount for salaried
10 employees” for “150 percent of the minimum wage.”

11 (II) For purposes of this clause:

12 (ia) “Designated pilot area” means an area designated as a
13 designated pilot area by the Governor’s Office of Business and
14 Economic Development.

15 (ib) Areas that may be designated as a designated pilot area are
16 limited to areas within a designated census tract or an economic
17 development area with average wages less than the statewide
18 average wages, based on information from the Labor Market
19 Division of the Employment Development Department, and areas
20 within a designated census tract or an economic development area
21 based on high poverty or high unemployment.

22 (ic) The total number of designated pilot areas that may be
23 designated is limited to five, one or more of which must be an area
24 within five or fewer designated census tracts within a single county
25 based on high poverty or high unemployment or an area within an
26 economic development area based on high poverty or high
27 unemployment.

28 (id) The designation of a designated pilot area shall be applicable
29 for a period of four calendar years, commencing with the first
30 calendar year for which the designation of a designated pilot area
31 is effective. The applicable period of a designated pilot area may
32 be extended, in the sole discretion of the Governor’s Office of
33 Business and Economic Development, for an additional period of
34 up to three calendar years. The applicable period, and any extended
35 period, shall not extend beyond December 31, 2020.

36 (III) The designation of an area as a designated pilot area and
37 the extension of the applicable period of a designated pilot area
38 shall be at the sole discretion of the Governor’s Office of Business
39 and Economic Development and shall not be subject to
40 administrative appeal or judicial review.

1 (B) Wages paid or incurred during the 60-month period
2 beginning with the first day the qualified full-time employee
3 commences employment with the qualified taxpayer. In the case
4 of any employee who is reemployed, including a regularly
5 occurring seasonal increase, in the trade or business operations of
6 the qualified taxpayer, this reemployment shall not be treated as
7 constituting commencement of employment for purposes of this
8 section.

9 (C) Except as provided in paragraph (3) of subdivision (m),
10 qualified wages shall not include any wages paid or incurred by
11 the qualified taxpayer on or after the date that the Department of
12 Finance's redesignation of designated census tracts is effective,
13 as provided in paragraph (2) of subdivision (g), so that a census
14 tract is no longer a designated census tract.

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

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

22 (B) (i) For purposes of this paragraph, "gross receipts, less
23 returns and allowances reportable to this state," means the sum of
24 the gross receipts from the production of business income, as
25 defined in subdivision (a) of Section 25120, and the gross receipts
26 from the production of nonbusiness income, as defined in
27 subdivision (d) of Section 25120.

28 (ii) In the case of any trade or business activity conducted by a
29 partnership or an "S" corporation, the limitations set forth in
30 subparagraph (A) shall be applied to the partnership or "S"
31 corporation and to each partner or shareholder.

32 (iii) For taxpayers that are required to be included in a combined
33 report under Section 25101 or authorized to be included in a
34 combined report under Section 25101.15, the dollar amount
35 specified in subparagraph (A) shall apply to the aggregate gross
36 receipts of all taxpayers that are required to be or authorized to be
37 included in a combined report.

38 (C) (i) "Small business" shall not include a sexually oriented
39 business.

40 (ii) For purposes of this subparagraph:

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

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

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

13 (A) Not in receipt of wages subject to withholding under Section
14 13020 of the Unemployment Insurance Code for that period.

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

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

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

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

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

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

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

36 (d) 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) In determining whether the taxpayer has first commenced
2 doing business in this state during the taxable year, the provisions
3 of subdivision (g) of Section 24416.20, without application of
4 paragraph (7) of that subdivision, shall apply.

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

12 (2) To obtain a tentative credit reservation with respect to a
13 qualified full-time employee, the qualified taxpayer shall provide
14 necessary information, as determined by the Franchise Tax Board,
15 including the name, social security number, the start date of
16 employment, the rate of pay of the qualified full-time employee,
17 the qualified taxpayer's gross receipts, less returns and allowances,
18 for the previous taxable year, and whether the qualified full-time
19 employee is a resident of a targeted employment area, as defined
20 in former Section 7072 of the Government Code, as in effect on
21 December 31, 2013.

22 (3) The qualified taxpayer shall provide the Franchise Tax Board
23 an annual certification of employment with respect to each
24 qualified full-time employee hired in a previous taxable year, on
25 or before the 15th day of the third month of the taxable year. The
26 certification shall include necessary information, as determined
27 by the Franchise Tax Board, including the name, social security
28 number, start date of employment, and rate of pay for each qualified
29 full-time employee employed by the qualified taxpayer.

30 (4) A tentative credit reservation provided to a taxpayer with
31 respect to an employee of that taxpayer shall not constitute a
32 determination by the Franchise Tax Board with respect to any of
33 the requirements of this section regarding a taxpayer's eligibility
34 for the credit authorized by this section.

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

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

38 (2) Determine the aggregate tentative reservation amount and
39 the aggregate small business tentative reservation amount for a
40 calendar year.

1 (3) A tentative credit reservation request from a qualified
2 taxpayer with respect to a qualified full-time employee who is a
3 resident of a targeted employment area, as defined in former
4 Section 7072 of the Government Code, as in effect on December
5 31, 2013, shall be expeditiously processed by the Franchise Tax
6 Board. The residence of a qualified full-time employee in a targeted
7 employment area shall have no other effect on the eligibility of an
8 individual as a qualified full-time employee or the eligibility of a
9 qualified taxpayer for the credit authorized by this section.

10 (4) Notwithstanding Section 19542, provide as a searchable
11 database on its Internet Web site, for each taxable year beginning
12 on or after January 1, 2014, and before January 1, 2021, the
13 employer names, amounts of tax credit claimed, and number of
14 new jobs created for each taxable year pursuant to this section and
15 Section 17053.73.

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

20 (2) The redesignation of designated census tracts and lowest
21 civilian unemployment census tracts by the Department of Finance
22 as provided in Section 13073.5 of the Government Code shall be
23 effective, for purposes of this credit, one year after the date that
24 the Department of Finance redesignates the designated census
25 tracts.

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

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

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

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

37 (D) If a qualified taxpayer acquires the major portion of a trade
38 or business of another taxpayer, hereinafter in this paragraph
39 referred to as the predecessor, or the major portion of a separate
40 unit of a trade or business of a predecessor, then, for purposes of

1 applying this section for any taxable year ending after that
2 acquisition, the employment relationship between a qualified
3 full-time employee and a qualified taxpayer shall not be treated
4 as terminated if the employee continues to be employed in that
5 trade or business.

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

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

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

15 (3) Rules similar to the rules provided in Sections 46(e) and
16 46(h) of the Internal Revenue Code, as in effect on November 4,
17 1990, shall apply to both of the following:

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

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

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

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

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

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

1 close of that period and the qualified taxpayer fails to offer
2 reemployment to that employee.

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

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

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

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

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

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

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

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

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

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

15 (m) (1) This section shall remain in effect only until December
16 1, 2024, and as of that date is repealed.

17 (2) Notwithstanding paragraph (1) of subdivision (a), this section
18 shall continue to be operative for taxable years beginning on or
19 after January 1, 2021, but only with respect to qualified full-time
20 employees who commenced employment with a qualified taxpayer
21 in a designated census tract or economic development area in a
22 taxable year beginning before January 1, 2021.

23 (3) This section shall remain operative for any qualified taxpayer
24 with respect to any qualified full-time employee after the
25 designated census tract is no longer designated or an economic
26 development area ceases to be an economic development area, as
27 defined in this section, for the remaining period, if any, of the
28 60-month period after the original date of hiring of an otherwise
29 qualified full-time employee and any wages paid or incurred with
30 respect to those qualified full-time employees after the designated
31 census tract is no longer designated or an economic development
32 area ceases to be an economic development area, as defined in this
33 section, shall be treated as qualified wages under this section,
34 provided the employee satisfies any other requirements of
35 paragraphs (10) and (12) of subdivision (b), as if the designated
36 census tract was still designated and binding or the economic
37 development area was still in existence.

1 SEC. 3. This act provides for a tax levy within the meaning of
2 Article IV of the Constitution and shall go into immediate effect.

O