SENATE BILL No. 1216

Introduced by Senator Hueso

February 18, 2016

An act to add and repeal Sections 17053.75 and 23675 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1216, as introduced, Hueso. Income taxes: credits: qualified employees.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including hiring credits within the specified economic development areas.

This bill would, under both laws for taxable years beginning on or after January 1, 2016, and before January 1, 2021, allow a credit against tax in an amount equal to 20% of qualified wages paid by a qualified taxpayer, as defined, to qualified employees, which includes persons between 18 and 25 years of age who complete a work readiness program, not to exceed $15,000 per qualified taxpayer per taxable year.

This bill would take effect immediately as a tax levy.

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

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

SECTION 1. Section 17053.75 is added to the Revenue and Taxation Code, to read:

17053.75. (a) (1) For each taxable year beginning on or after January 1, 2016, and before January 1, 2021, there shall be allowed to a qualified taxpayer that hires a qualified full-time employee and pays or incurs qualified wages attributable to work performed by the qualified full-time employee, and that receives a tentative credit reservation for that qualified full-time employee, a credit against the "net tax," as defined in Section 17039, in an amount calculated under this section.

(2) The amount of the credit allowable under this section for a taxable year shall be equal to 20 percent of all qualified wages paid or incurred to the qualified full-time employee, not to exceed $15,000 per qualified taxpayer per taxable year.

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

(b) For purposes of this section:

(1) "Acquire" includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(2) "Job training provider" means an entity that delivers a combined job readiness and life-skills training program that, at a minimum, includes high school or continuing education courses. The entity's program may also offer additional services like job placement, career and mental health counseling, prisoner reentry services, and relapse prevention and sober-living support.

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

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

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

(ii) Is hired by the qualified taxpayer on or after January 1, 2016.

(iii) Satisfies either of the following conditions:

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

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

(iv) Is an ex-offender previously convicted of a felony who is, at the time of hiring, between 18 and 25 years of age and who demonstrates documented completion of a work readiness program.

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

(5) (A) "Qualified taxpayer" means a person or entity engaged in a trade or business within the state that, during the taxable year, pays or incurs qualified wages.

(B) In the case of any pass-thru entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 23675 shall be allowed to the pass-thru entity and passed through to the partners and shareholders in accordance with applicable provisions of this part or Part 11 (commencing with Section 23001). For purposes of this subdivision, the term "pass-thru entity" means any partnership or "S" corporation.

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

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

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

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

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

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

(II) For purposes of this clause:

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

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

(6) "Qualified wages" means those wages that meet all of the following requirements:

(A) That portion of wages paid or incurred by the qualified taxpayer during the taxable year to each qualified full-time employee that exceeds 150 percent of minimum wage, but does not exceed 350 percent of minimum wage.

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

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

(8) "Work readiness program" means a program offered by a job training provider that provides vocational job training, educational opportunities, and life skills. A work readiness program shall focus on skills acquisition and educational advancement and shall foster behavioral changes that promote person responsibility and positive contributions to society. A work readiness program shall include all of the following:

(A) Paid or unpaid on-the-job training opportunities, preapprenticeship programs, vocational instruction, or internship placement.

(B) The opportunity for academic advancement.

(C) The opportunity to earn at least one industry recognized certification.

(D) A life-skills training component.

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

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

(2) To obtain a tentative credit reservation with respect to a qualified full-time employee, the qualified taxpayer shall provide necessary information, as determined by the Franchise Tax Board, including the name, social security number, the start date of employment, and the rate of pay of the qualified full-time employee.

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

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

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

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

(2) Determine the aggregate tentative reservation amount.

(3) Notwithstanding Section 19542, provide as a searchable database on its Internet Web site, for each taxable year beginning on or after January 1, 2016, and before January 1, 2021, the employer names, amounts of tax credit claimed, and number of new jobs created for each taxable year pursuant to this section and Section 23675.

(f) For purposes of this section:

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

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

(3) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (f) of Section 23675, shall apply with respect to determining employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) 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 shall not apply to any rule, guideline, or procedure prescribed by the Franchise Tax Board pursuant to this section.

(k) The Franchise Tax Board shall annually provide to the Joint Legislative Budget Committee, in compliance with Section 9795 of the Government Code, by no later than March 1, a report of the total dollar amount of the credits claimed under this section with respect to the relevant fiscal year. The report shall compare the total dollar amount of credits claimed under this section with respect to that fiscal year with the department's estimate with respect to that same fiscal year. If the total dollar amount of credits claimed for the fiscal year is less than the estimate for that fiscal year, the report shall identify options for increasing annual claims of the credit so as to meet estimated amounts.

(*l*) Section 41 shall not apply to the credit allowed by this section.

(m) This section shall remain in effect only until December 1, 2021, and as of that date is repealed.

SEC. 2. Section 23675 is added to the Revenue and Taxation Code, to read:

23675. (a) (1) For each taxable year beginning on or after January 1, 2016, and before January 1, 2021, there shall be allowed to a qualified taxpayer that hires a qualified full-time employee and pays or incurs qualified wages attributable to work performed by the qualified full-time employee, and that receives a tentative credit reservation for that qualified full-time employee, a credit against the "net tax," as defined in Section 23036, in an amount calculated under this section.

(2) The amount of the credit allowable under this section for a taxable year shall be equal to 20 percent of all qualified wages paid or incurred to the qualified full-time employee, not to exceed $15,000 per qualified taxpayer per taxable year.

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

(b) For purposes of this section:

(1) "Acquire" includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(2) "Job training provider" means an entity that delivers a combined job readiness and life-skills training program that, at a minimum, includes high school or continuing education courses. The entity's program may also offer additional services like job placement, career and mental health counseling, prisoner reentry services, and relapse prevention and sober-living support.

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

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

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

(ii) Is hired by the qualified taxpayer on or after January 1, 2016.

(iii) Satisfies either of the following conditions:

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

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

(iv) Is an ex-offender previously convicted of a felony who is, at the time of hiring, between 18 and 25 years of age and who demonstrates documented completion of a work readiness program.

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

(5) (A) "Qualified taxpayer" means a corporation engaged in a trade or business within the state that, during the taxable year, pays or incurs qualified wages.

(B) In the case of any pass-thru entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 17053.75 shall be allowed to the pass-thru entity and passed through to the partners and shareholders in accordance with applicable provisions of this part or Part 10 (commencing with Section 17001). For purposes of this subdivision, the term "pass-thru entity" means any partnership or "S" corporation.

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

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

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

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

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

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

(II) For purposes of this clause:

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

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

(6) "Qualified wages" means those wages that meet all of the following requirements:

(A) That portion of wages paid or incurred by the qualified taxpayer during the taxable year to each qualified full-time employee that exceeds 150 percent of minimum wage, but does not exceed 350 percent of minimum wage.

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

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

(8) "Work readiness program" means a program offered by a job training provider that provides vocational job training, educational opportunities, and life skills. A work readiness program shall focus on skills acquisition and educational advancement and shall foster behavioral changes that promote person responsibility and positive contributions to society. A work readiness program shall include all of the following:

(A) Paid or unpaid on-the-job training opportunities, preapprenticeship programs, vocational instruction, or internship placement.

(B) The opportunity for academic advancement.

(C) The opportunity to earn at least one industry recognized certification.

(D) A life-skills training component.

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

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

(2) To obtain a tentative credit reservation with respect to a qualified full-time employee, the qualified taxpayer shall provide necessary information, as determined by the Franchise Tax Board, including the name, social security number, the start date of employment, and the rate of pay of the qualified full-time employee.

(3) The qualified taxpayer shall provide the Franchise Tax Board an annual certification of employment with respect to each qualified full-time employee hired in a previous taxable year, on or before, the 15th day of the third month of the taxable year. The

certification shall include necessary information, as determined by the Franchise Tax Board, including the name, social security number, start date of employment, and rate of pay for each qualified full-time employee employed by the qualified taxpayer.

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

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

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

(2) Determine the aggregate tentative reservation amount.

(3) Notwithstanding Section 19542, provide as a searchable database on its Internet Web site, for each taxable year beginning on or after January 1, 2016, and before January 1, 2021, the employer names, amounts of tax credit claimed, and number of new jobs created for each taxable year pursuant to this section and Section 17053.75.

(f) (1) For purposes of this section:

(A) All employees of corporations that are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) 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 shall not apply to any rule, guideline, or procedure prescribed by the Franchise Tax Board pursuant to this section.

(j) The Franchise Tax Board shall annually provide to the Joint Legislative Budget Committee, in compliance with Section 9795 of the Government Code, by no later than March 1, a report of the total dollar amount of the credits claimed under this section with respect to the relevant fiscal year. The report shall compare the total dollar amount of credits claimed under this section with respect to that fiscal year with the department's estimate with respect to that same fiscal year. If the total dollar amount of credits claimed for the fiscal year is less than the estimate for that fiscal year, the report shall identify options for increasing annual claims of the credit so as to meet estimated amounts.

(k) Section 41 shall not apply to the credit allowed by this section.

(*l*) This section shall remain in effect only until December 1, 2021, and as of that date is repealed.

SEC. 3. 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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