

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:

- 1 SECTION 1. Section 17053.75 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17053.75. (a) (1) For each taxable year beginning on or after
- 4 January 1, 2016, and before January 1, 2021, there shall be allowed
- 5 to a qualified taxpayer that hires a qualified full-time employee

1 and pays or incurs qualified wages attributable to work performed
2 by the qualified full-time employee, and that receives a tentative
3 credit reservation for that qualified full-time employee, a credit
4 against the “net tax,” as defined in Section 17039, in an amount
5 calculated under this section.

6 (2) The amount of the credit allowable under this section for a
7 taxable year shall be equal to 20 percent of all qualified wages
8 paid or incurred to the qualified full-time employee, not to exceed
9 \$15,000 per qualified taxpayer per taxable year.

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

14 (b) For purposes of this section:

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

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

23 (3) “Minimum wage” means the wage established pursuant to
24 Chapter 1 (commencing with Section 1171) of Part 4 of Division
25 2 of the Labor Code.

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

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

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

31 (iii) Satisfies either of the following conditions:

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

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

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

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

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

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

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

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

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

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

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

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

35 (II) For purposes of this clause:

36 (ia) “Sexually oriented business” means a nightclub, bar,
37 restaurant, or similar commercial enterprise that provides for an
38 audience of two or more individuals live nude entertainment or
39 live nude performances where the nudity is a function of everyday

1 business operations and where nudity is a planned and intentional
2 part of the entertainment or performance.

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

7 (6) “Qualified wages” means those wages that meet all of the
8 following requirements:

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

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

21 (7) “Seasonal employment” means employment by a qualified
22 taxpayer that has regular and predictable substantial reductions in
23 trade or business operations.

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

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

34 (B) The opportunity for academic advancement.

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

37 (D) A life-skills training component.

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

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

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

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

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

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

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

30 (2) Determine the aggregate tentative reservation amount.

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

37 (f) For purposes of this section:

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

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

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

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

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

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

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

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

38 (C) A termination of employment of a qualified full-time
39 employee if it is determined that the termination was due to the

1 misconduct, as defined in Sections 1256-30 to 1256-43, inclusive,
2 of Title 22 of the California Code of Regulations, of that employee.

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

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

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

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

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

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

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

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

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

36 (j) The Franchise Tax Board may prescribe rules, guidelines,
37 or procedures necessary or appropriate to carry out the purposes
38 of this section, including any guidelines regarding the allocation
39 of the credit allowed under this section. Chapter 3.5 (commencing
40 with Section 11340) of Part 1 of Division 3 of Title 2 of the

1 Government Code shall not apply to any rule, guideline, or
2 procedure prescribed by the Franchise Tax Board pursuant to this
3 section.

4 (k) The Franchise Tax Board shall annually provide to the Joint
5 Legislative Budget Committee, in compliance with Section 9795
6 of the Government Code, by no later than March 1, a report of the
7 total dollar amount of the credits claimed under this section with
8 respect to the relevant fiscal year. The report shall compare the
9 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 (l) Section 41 shall not apply to the credit allowed by this
16 section.

17 (m) This section shall remain in effect only until December 1,
18 2021, and as of that date is repealed.

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

21 23675. (a) (1) For each taxable year beginning on or after
22 January 1, 2016, and before January 1, 2021, there shall be allowed
23 to a qualified taxpayer that hires a qualified full-time employee
24 and pays or incurs qualified wages attributable to work performed
25 by the qualified full-time employee, and that receives a tentative
26 credit reservation for that qualified full-time employee, a credit
27 against the "net tax," as defined in Section 23036, in an amount
28 calculated under this section.

29 (2) The amount of the credit allowable under this section for a
30 taxable year shall be equal to 20 percent of all qualified wages
31 paid or incurred to the qualified full-time employee, not to exceed
32 \$15,000 per qualified taxpayer per taxable year.

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

37 (b) For purposes of this section:

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

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

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

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

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

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

15 (iii) Satisfies either of the following conditions:

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

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

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

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

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

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

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

- 1 (i) Employers that provide temporary help services, as described
2 in Code 561320 of the North American Industry Classification
3 System (NAICS) published by the United States Office of
4 Management and Budget, 2012 edition.
- 5 (ii) Employers that provide retail trade services, as described
6 in Sector 44-45 of the North American Industry Classification
7 System (NAICS) published by the United States Office of
8 Management and Budget, 2012 edition.
- 9 (iii) Employers that are primarily engaged in providing food
10 services, as described in Code 711110, 722511, 722513, 722514,
11 or 722515 of the North American Industry Classification System
12 (NAICS) published by the United States Office of Management
13 and Budget, 2012 edition.
- 14 (iv) Employers that are primarily engaged in services as
15 described in Code 713210, 721120, or 722410 of the North
16 American Industry Classification System (NAICS) published by
17 the United States Office of Management and Budget, 2012 edition.
- 18 (v) (I) An employer that is a sexually oriented business.
19 (II) For purposes of this clause:
- 20 (ia) “Sexually oriented business” means a nightclub, bar,
21 restaurant, or similar commercial enterprise that provides for an
22 audience of two or more individuals live nude entertainment or
23 live nude performances where the nudity is a function of everyday
24 business operations and where nudity is a planned and intentional
25 part of the entertainment or performance.
- 26 (ib) “Nude” means clothed in a manner that leaves uncovered
27 or visible, through less than fully opaque clothing, any portion of
28 the genitals or, in the case of a female, any portion of the breasts
29 below the top of the areola of the breasts.
- 30 (6) “Qualified wages” means those wages that meet all of the
31 following requirements:
- 32 (A) That portion of wages paid or incurred by the qualified
33 taxpayer during the taxable year to each qualified full-time
34 employee that exceeds 150 percent of minimum wage, but does
35 not exceed 350 percent of minimum wage.
- 36 (B) Wages paid or incurred during the 60-month period
37 beginning with the first day the qualified full-time employee
38 commences employment with the qualified taxpayer. In the case
39 of any employee who is reemployed, including a regularly
40 occurring seasonal increase, in the trade or business operations of

1 the qualified taxpayer, this reemployment shall not be treated as
2 constituting commencement of employment for purposes of this
3 section.

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

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

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

17 (B) The opportunity for academic advancement.

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

20 (D) A life-skills training component.

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

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

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

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

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

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

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

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

13 (2) Determine the aggregate tentative reservation amount.

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

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

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

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

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

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

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

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

7 (3) Rules similar to the rules provided in Sections 46(e) and
8 46(h) of the Internal Revenue Code, as in effect on November 4,
9 1990, shall apply to both of the following:

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

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

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

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

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

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

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

38 (D) A termination of employment of a qualified full-time
39 employee due to a substantial reduction in the trade or business

1 operations of the qualified taxpayer, including reductions due to
2 seasonal employment.

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

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

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

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

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

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

33 (j) The Franchise Tax Board shall annually provide to the Joint
34 Legislative Budget Committee, in compliance with Section 9795
35 of the Government Code, by no later than March 1, a report of the
36 total dollar amount of the credits claimed under this section with
37 respect to the relevant fiscal year. The report shall compare the
38 total dollar amount of credits claimed under this section with
39 respect to that fiscal year with the department’s estimate with
40 respect to that same fiscal year. If the total dollar amount of credits

1 claimed for the fiscal year is less than the estimate for that fiscal
2 year, the report shall identify options for increasing annual claims
3 of the credit so as to meet estimated amounts.

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

6 (l) This section shall remain in effect only until December 1,
7 2021, and as of that date is repealed.

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

O