

AMENDED IN SENATE MAY 4, 2016
AMENDED IN SENATE APRIL 12, 2016

SENATE BILL

No. 1272

Introduced by Senator Runner

February 18, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1272, as amended, Runner. Income taxes: credit: small business employee savings plan.

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

This bill would allow, for taxable years beginning on or after January 1, 2016, and before January 1, 2021, a tax credit under both laws in an amount equal to 50% of the qualified taxpayer's *matching* contributions to ~~an~~ *the account of an eligible employee's* Employee Savings Match Plan, as ~~provided~~: *provided, not to exceed \$1,000.*

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 17053.50 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17053.50. (a) For *each taxable-years year* beginning on or
- 4 after January 1, 2016, and before January 1, 2021, there shall be

1 allowed to a qualified taxpayer a credit against the “net tax,” as
2 defined in Section 17039, in an amount equal to 50 percent of the
3 qualified taxpayer’s *dollar-for-dollar matching* contributions to
4 ~~an~~ *the account of an eligible employee’s* Employee Savings Match
5 Plan ~~not to exceed up to~~ two thousand dollars (\$2,000) per
6 employee per taxable year. *The maximum amount of credit allowed*
7 *pursuant to this section is one thousand dollars (\$1,000).*

8 (b) For purposes of this section:

9 (1) “Employee Savings Match Plan” means a savings plan
10 established by a qualified taxpayer that meets all of the following
11 conditions:

12 (A) ~~The employer may match~~ *A qualified taxpayer may match,*
13 *on a dollar-for-dollar basis, the* voluntary contributions of
14 participating employees, described in subparagraph (B), without
15 limitation. *Contributions in excess of two thousand dollars (\$2,000)*
16 *per employee per taxable year shall not be eligible for a credit*
17 *pursuant to this section.*

18 (B) Any employee who has ~~an annual salary of at least twelve~~
19 ~~thousand dollars (\$12,000)~~ *California wages subject to Division*
20 *6 (commencing with Section 13000) of the Unemployment*
21 *Insurance Code* and has been continuously employed by the
22 qualified taxpayer for at least six months may participate in *and*
23 *contribute to* an Employee Savings Match Plan.

24 (C) At least one-half of the participating employees, described
25 in subparagraph (B), earn less than forty thousand dollars (\$40,000)
26 during the ~~calendar~~ *taxable year* in wages *subject to Division 6*
27 *(commencing with Section 13000) of the Unemployment Insurance*
28 *Code* for work performed for the employer contributing to the
29 ~~plan~~ *Employee Savings Match Plan.*

30 (D) ~~Deposits~~ *Contributions* are held in an insured bank or other
31 financial institution ~~subject to withdrawal~~ *in individual accounts*
32 *as separate property of each participating employee and may be*
33 *withdrawn* by employees, as provided in subparagraph (E). *An*
34 *insured bank or financial institution maintaining the accounts of*
35 *employees participating in an Employee Savings Match Plan shall*
36 *provide to the qualified taxpayer and each participating employee*
37 *such information, at the time and in the manner as the Franchise*
38 *Tax Board may prescribe, to prepare a Form 1099 for each*
39 *employee. Upon request, the qualified taxpayer and participating*

1 *employee shall provide the information described in the preceding*
2 *sentence to the Franchise Tax Board.*

3 (E) ~~Any~~ ~~(i)~~ ~~If an employee who~~ withdraws funds from an
4 Employee Savings Match Plan less than ~~one year~~ 12 months after
5 the employee's first contribution, or less than ~~one year~~ 12 months
6 after a previous ~~withdrawal shall not be eligible to participate in~~
7 ~~that plan for the remainder of the year withdrawal, other than a~~
8 ~~qualified withdrawal, then a qualified taxpayer is not eligible for~~
9 ~~a credit pursuant to this section for any matching contributions~~
10 ~~made with respect to contributions made by that employee during~~
11 ~~the remainder of the taxable year in which that withdrawal was~~
12 ~~made or during the next calendar year. A transfer of funds from~~
13 ~~an Employee Savings Match Plan into an IRA or other deferred~~
14 ~~compensation plan shall not be considered a withdrawal for~~
15 ~~purposes of this subparagraph. the next taxable year.~~

16 (ii) *Clause (i) shall not apply if the total amount withdrawn in*
17 *a taxable year does not exceed the amount considered a qualified*
18 *withdrawal.*

19 (2) *“Matching contributions” means any contributions made*
20 *by a qualified taxpayer for the benefit of employees which are*
21 *eligible to be taken into account for purposes of computing the*
22 *credit allowed pursuant to this section.*

23 ~~(2)~~
24 (3) *“Qualified taxpayer” means a taxpayer that is a small*
25 *business as defined in Section 14837 of the Government Code.*
26 *that, for the taxable year for which a credit is allowed pursuant*
27 *to this section, satisfies both of the following conditions:*

28 (A) *Has gross receipts, less returns and allowances, derived*
29 *from or attributable to this state for the taxable year of ten million*
30 *dollars (\$10,000,000) or less.*

31 (i) *“Gross receipts, less returns and allowances reportable to*
32 *this state,” means the sum of the gross receipts from the production*
33 *of business income, as defined in subdivision (a) of Section 25120,*
34 *and the gross receipts from the production of nonbusiness income,*
35 *as defined in subdivision (d) of Section 25120.*

36 (ii) *“Gross receipts, less returns and allowances reportable to*
37 *this state,” shall be determined using the rules for assigning sales*
38 *under Sections 25135 and 25136, and the regulations thereunder,*
39 *as modified by the regulations under Section 25137, other than*
40 *those provisions that exclude receipts from the sales factor.*

1 (iii) In determining the gross receipts derived from or
2 attributable to the state of any other business, in whatever form
3 conducted, that is owned, directly or indirectly, by persons, within
4 the meaning of Section 17007, that are treated as related, within
5 the meaning of Section 267, 318, or 707 of the Internal Revenue
6 Code, to the small business, shall be aggregated with the gross
7 receipts derived from or attributable to the state of the small
8 business to determine whether the small business qualifies for the
9 credit pursuant to this section.

10 (B) Has fewer than 100 employees at any time during the taxable
11 year. In determining the number of employees of the taxpayer, all
12 employees of any trades or businesses, in whatever form conducted
13 or organized, that are treated as related, within the meaning of
14 Section 267, 318, or 707 of the Internal Revenue Code, shall be
15 treated as employed by the taxpayer for purposes of determining
16 the 100-employee limitation applicable to the taxpayer.

17 (4) “Qualified withdrawal” means a withdrawal from an
18 Employee Savings Match Plan during a taxable year which does
19 not exceed the amount the employee contributed to a qualified
20 retirement plan under Section 408 of the Internal Revenue Code,
21 relating to individual retirement accounts, or a Secure Choice
22 account established pursuant to Section 100012 of the Government
23 Code, during the same taxable year.

24 (c) (1) The credit allowed by this section must be claimed on
25 a timely filed original return.

26 (2) The qualified taxpayer shall annually report the social
27 security number and account information for each employee
28 participating in and contributing to the Employee Savings Match
29 Plan in the form and manner prescribed by the Franchise Tax
30 Board.

31 (3) No other credit or deduction shall be allowed under this
32 part with respect to matching contributions of a qualified taxpayer
33 that are taken into account in computing the credit allowed by this
34 section.

35 (e)

36 (d) In the case where the credit allowed by this section exceeds
37 the “~~net-tax~~ tax,” the excess may be carried over to reduce the
38 “~~net-tax,~~” tax” in the following year, and succeeding three years
39 if necessary, until the credit is exhausted.

1 ~~(d) Contributions to, and income from, an Employee Savings~~
2 ~~Match Plan shall be treated as ordinary income.~~

3 (e) (1) Any matching contributions made by a qualified taxpayer
4 to an employee's account shall remain the property of the
5 employee.

6 (2) A credit shall not be allowed pursuant to this section for
7 any contribution made by a qualified taxpayer to the account of
8 an employee who is not eligible under subparagraph (B) or (E) of
9 paragraph (1) of subdivision (b).

10 (f) (1) The Franchise Tax Board may prescribe rules,
11 guidelines, procedures, or regulations necessary or appropriate
12 to carry out the purposes of this section.

13 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
14 Division 3 of Title 2 of the Government Code shall not apply to
15 any standard, criterion, procedure, determination, rule, notice, or
16 guideline established or issued by the Franchise Tax Board
17 pursuant to this section.

18 ~~(e)~~

19 (g) This section shall remain in effect only until December 1,
20 2021, 2022, and as of that date is repealed.

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

23 23650. (a) For ~~each taxable years year~~ beginning on or after
24 January 1, 2016, and before January 1, 2021, there shall be allowed
25 to a qualified taxpayer a credit against the "tax," as defined in
26 Section 23036, in an amount equal to 50 percent of the qualified
27 taxpayer's ~~dollar-for-dollar matching contributions to an the~~
28 ~~account of an eligible employee's Employee Savings Match Plan,~~
29 ~~not to exceed Plan up to~~ two thousand dollars (\$2,000) per
30 employee per taxable year. *The maximum amount of credit allowed*
31 *pursuant to this section is one thousand dollars (\$1,000).*

32 (b) For purposes of this section:

33 (1) "Employee Savings Match Plan" means a savings plan
34 established by a qualified taxpayer that meets all of the following
35 conditions:

36 (A) ~~The employer may match~~ *A qualified taxpayer may match,*
37 *on a dollar-for-dollar basis, the* voluntary contributions of
38 participating employees, described in subparagraph (B), without
39 limitation. *Contributions in excess of two thousand dollars (\$2,000)*

1 *per employee per taxable year shall not be eligible for a credit*
2 *pursuant to this section.*

3 (B) Any employee who has ~~an annual salary of at least twelve~~
4 ~~thousand dollars (\$12,000)~~ *California wages subject to Division*
5 *6 (commencing with Section 13000) of the Unemployment*
6 *Insurance Code* and has been continuously employed by the
7 qualified taxpayer for at least six months may participate in *and*
8 *contribute to an Employee Savings Match Plan.*

9 (C) At least one-half of the participating employees, described
10 in subparagraph (B), earn less than forty thousand dollars (\$40,000)
11 during the ~~calendar~~ *taxable year* in wages *subject to Division 6*
12 *(commencing with Section 13000) of the Unemployment Insurance*
13 *Code* for work performed for the employer contributing to the
14 ~~plan.~~ *Employee Savings Match Plan.*

15 (D) ~~Deposits-Contributions~~ are held in an insured bank or other
16 financial institution ~~subject to withdrawal~~ *in individual accounts*
17 *as separate property of each participating employee and may be*
18 *withdrawn* by employees, as provided in subparagraph (E). *An*
19 *insured bank or financial institution maintaining the accounts of*
20 *employees participating in an Employee Savings Match Plan shall*
21 *provide to the qualified taxpayer and each participating employee*
22 *such information, at the time and in the manner as the Franchise*
23 *Tax Board may prescribe, to prepare a Form 1099 for each*
24 *employee. Upon request, the qualified taxpayer and participating*
25 *employee shall provide the information described in the preceding*
26 *sentence to the Franchise Tax Board.*

27 (E) ~~Any-~~*(i) If an employee who* withdraws funds from an
28 Employee Savings Match Plan less than ~~one year~~ *12 months* after
29 the employee's first contribution, or less than ~~one year~~ *12 months*
30 after a previous ~~withdrawal~~ *shall not be eligible to participate in*
31 ~~that plan for the remainder of the year in which that withdrawal~~
32 ~~was made or during the next calendar year. A transfer of funds~~
33 ~~from an Employee Savings Match Plan into an IRA or other~~
34 ~~deferred compensation plan shall not be considered a withdrawal~~
35 ~~for purposes of this subparagraph.~~ *withdrawal, other than a*
36 *qualified withdrawal, then a qualified taxpayer is not eligible for*
37 *a credit pursuant to this section for any matching contributions*
38 *made with respect to contributions made by that employee during*
39 *the remainder of the taxable year in which that withdrawal was*
40 *made or the next taxable year.*

1 (ii) Clause (i) shall not apply if the total amount withdrawn in
2 a taxable year does not exceed the amount considered a qualified
3 withdrawal.

4 (2) “Matching contributions” means any contributions made
5 by a qualified taxpayer for the benefit of employees which are
6 eligible to be taken into account for purposes of computing the
7 credit allowed pursuant to this section.

8 (2)

9 (3) “Qualified taxpayer” means a taxpayer ~~that is a small~~
10 ~~business as defined in Section 14837 of the Government Code.~~
11 *that, for the taxable year for which a credit is allowed pursuant*
12 *to this section, satisfies both of the following conditions:*

13 (A) *Has gross receipts, less returns and allowances, derived*
14 *from or attributable to this state for the taxable year of ten million*
15 *dollars (\$10,000,000) or less.*

16 (i) *“Gross receipts, less returns and allowances reportable to*
17 *this state,” means the sum of the gross receipts from the production*
18 *of business income, as defined in subdivision (a) of Section 25120,*
19 *and the gross receipts from the production of nonbusiness income,*
20 *as defined in subdivision (d) of Section 25120.*

21 (ii) *“Gross receipts, less returns and allowances reportable to*
22 *this state,” shall be determined using the rules for assigning sales*
23 *under Sections 25135 and 25136, and the regulations thereunder,*
24 *as modified by the regulations under Section 25137, other than*
25 *those provisions that exclude receipts from the sales factor.*

26 (iii) *In determining the gross receipts derived from or*
27 *attributable to the state of any other business, in whatever form*
28 *conducted, that is owned, directly or indirectly, by persons, within*
29 *the meaning of Section 17007, that are treated as related, within*
30 *the meaning of Section 267, 318, or 707 of the Internal Revenue*
31 *Code, to the small business, shall be aggregated with the gross*
32 *receipts derived from or attributable to the state of the small*
33 *business to determine whether the small business qualifies for the*
34 *credit pursuant to this section.*

35 (B) *Has fewer than 100 employees at any time during the taxable*
36 *year. In determining the number of employees of the taxpayer, all*
37 *employees of any trades or businesses, in whatever form conducted*
38 *or organized, that are treated as related, within the meaning of*
39 *Section 267, 318, or 707 of the Internal Revenue Code, shall be*

1 treated as employed by the taxpayer for purposes of determining
2 the 100-employee limitation applicable to the taxpayer.

3 (4) “Qualified withdrawal” means a withdrawal from an
4 Employee Savings Match Plan during a taxable year which does
5 not exceed the amount the employee contributed to a qualified
6 retirement plan under Section 408 of the Internal Revenue Code,
7 relating to individual retirement accounts, or a Secure Choice
8 account established pursuant to Section 100012 of the Government
9 Code, during the same taxable year.

10 (c) (1) The credit allowed by this section must be claimed on
11 a timely filed original return.

12 (2) The qualified taxpayer shall annually report the social
13 security number and account information for each employee
14 participating in and contributing to the Employee Savings Match
15 Plan in the form and manner prescribed by the Franchise Tax
16 Board.

17 (3) No other credit or deduction shall be allowed under this
18 part with respect to matching contributions of a qualified taxpayer
19 that are taken into account in computing the credit allowed by this
20 section.

21 (e)

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

26 ~~(d) Contributions to, and income from, an Employee Savings~~
27 ~~Match Plan shall be treated as ordinary income.~~

28 (e) (1) Any matching contributions made by a qualified taxpayer
29 to an employee’s account shall remain the property of the
30 employee.

31 (2) A credit shall not be allowed pursuant to this section for
32 any contribution made by a qualified taxpayer to the account of
33 an employee who is not eligible under subparagraph (B) or (E) of
34 paragraph (1) of subdivision (b).

35 (f) (1) The Franchise Tax Board may prescribe rules,
36 guidelines, procedures, or regulations necessary or appropriate
37 to carry out the purposes of this section.

38 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
39 Division 3 of Title 2 of the Government Code shall not apply to
40 any standard, criterion, procedure, determination, rule, notice, or

1 *guideline established or issued by the Franchise Tax Board*
2 *pursuant to this section.*

3 (e)

4 (g) This section shall remain in effect only until December 1,
5 2021, 2022, and as of that date is repealed.

6 SEC. 3. (a) In accordance with Section 41 of the Revenue and
7 Taxation Code, the purpose of the credit allowed by Sections
8 17053.50 and 23650 of the Revenue and Taxation Code, as added
9 by Sections 1 and 2 of this act is to promote savings for employees,
10 especially young and low-income workers who have no savings
11 and no retirement options other than social security. To measure
12 whether the credit achieves its intended purpose, on or before
13 January 1, 2018, and each January 1 thereafter, the Franchise Tax
14 Board shall annually prepare a written report to the Legislature of
15 the following:

16 (1) The percentage of employees under 30 years of age who are
17 receiving matching ~~funds~~; *contributions*.

18 (2) The percentage of employees earning less than forty
19 thousand dollars (\$40,000) per ~~annum~~ *taxable year* who are
20 receiving matching ~~funds~~; *contributions*.

21 (b) A report submitted pursuant to subdivision (a) shall be
22 submitted in compliance with Section 9795 of the Government
23 Code.

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