

AMENDED IN SENATE JUNE 28, 2010
AMENDED IN ASSEMBLY MAY 28, 2010
AMENDED IN ASSEMBLY MAY 12, 2010
AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1973

Introduced by Assembly Member Swanson

February 17, 2010

An act to repeal and amend Sections 17053.80 and 23623 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1973, as amended, Swanson. Income taxes: credits: qualified ~~employees: hires:~~ *employees.*

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit for taxable years beginning on or after January 1, 2009, in the amount of \$3,000 for each full-time employee hired by a qualified employer. Those laws define “qualified employer” as a taxpayer that employed 20 or fewer employees as of the last day of the preceding taxable year.

This bill would, ~~under both laws, for taxable years beginning on or after January 1, 2011, expand the definition of “qualified employer” to mean a taxpayer that employed 30 or fewer employees as of the last day of the preceding taxable year. This bill would also, under both laws,~~ for taxable years beginning on or after January 1, 2011, authorize a

credit in the amount of \$5,000 for each full-time employee who is *either* an ex-offender, *or a person who has been unemployed for 12 or more consecutive months*, as specified.

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 17053.80 of the Revenue and Taxation
2 Code, as added by Section 3 of Chapter 10 of the Third
3 Extraordinary Session of the Statutes of 2009, is repealed.

4 SEC. 2. Section 17053.80 of the Revenue and Taxation Code,
5 as added by Section 3 of Chapter 17 of the Third Extraordinary
6 Session of the Statutes of 2009, is amended to read:

7 17053.80. (a) (1) Except as provided in paragraph (2), for
8 each taxable year beginning on or after January 1, 2009, there shall
9 be allowed as a credit against the “net tax,” as defined in Section
10 17039, three thousand dollars (\$3,000) for each net increase in
11 qualified full-time employees, as specified in subdivision (c), hired
12 during the taxable year by a qualified employer.

13 (2) (A) For each taxable year beginning on or after January 1,
14 2011, there shall be allowed as a credit against the “net tax,” as
15 defined in Section 17039, five thousand dollars (\$5,000) for each
16 net increase in qualified full-time employees, as specified in
17 subdivision (c), hired during the taxable year by a qualified
18 employer.

19 (B) For purposes of this paragraph, a “qualified full-time
20 employee” means an individual who meets the criteria of paragraph
21 (2) of subdivision (b), and who is *either* an ex-offender who was
22 convicted of a felony, *or a person who has been unemployed for*
23 *12 or more consecutive months prior to being hired by a qualified*
24 *employer*. A “qualified full-time employee” shall not include a sex
25 offender pursuant to Section 290 of the Penal Code, or the
26 equivalent in another state or territory, under military law, or under
27 federal law, or a person convicted of a serious or violent felony,
28 as defined in subdivision (c) of Section 667.5 and subdivision (c)
29 of Section 1192.7 of the Penal Code.

30 (b) For purposes of this section:

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

3 (2) "Qualified full-time employee" means *either of the following*:

4 (A) A qualified employee who was paid qualified wages by the
5 qualified employer for services of not less than an average of 35
6 hours per week.

7 (B) A qualified employee who was a salaried employee and
8 was paid compensation during the taxable year for full-time
9 employment, within the meaning of Section 515 of the Labor Code,
10 by the qualified employer.

11 (3) A "qualified employee" shall not include any of the
12 following:

13 (A) An employee certified as a qualified employee in an
14 enterprise zone designated in accordance with Chapter 12.8
15 (commencing with Section 7070) of Division 7 of Title 1 of the
16 Government Code.

17 (B) An employee certified as a qualified disadvantaged
18 individual in a manufacturing enhancement area designated in
19 accordance with Section 7073.8 of the Government Code.

20 (C) An employee certified as a qualified employee in a targeted
21 tax area designated in accordance with Section 7097 of the
22 Government Code.

23 (D) An employee certified as a qualified disadvantaged
24 individual or a qualified displaced employee in a local agency
25 military base recovery area (LAMBRA) designated in accordance
26 with Chapter 12.97 (commencing with Section 7105) of Division
27 7 of Title 1 of the Government Code.

28 (E) An employee whose wages are included in calculating any
29 other credit allowed under this part.

30 ~~(4) (A) For taxable years beginning on or after January 1, 2009,~~
31 ~~and before January 1, 2011,~~

32 (4) A "qualified employer" means a taxpayer that, as of the last
33 day of the preceding taxable year, employed a total of 20 or fewer
34 employees.

35 ~~(B) For taxable years beginning on or after January 1, 2011,~~
36 ~~"qualified employer" means a taxpayer that, as of the last day of~~
37 ~~the preceding taxable year, employed a total of 30 or fewer~~
38 ~~employees.~~

(5) “Qualified wages” means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

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

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

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

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

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

(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the preceding taxable year.

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

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

(d) In the case where 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 seven years if necessary, until the credit is exhausted.

(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.

(f) For purposes of this section:

(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue 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 (f) of Section 17276, without application of
4 paragraph (7) of that subdivision, shall apply.

5 (g) (1) (A) Credit under this section and Section 23623 shall
6 be allowed only for credits claimed on timely filed original returns
7 received by the Franchise Tax Board on or before the cutoff date
8 established by the Franchise Tax Board.

9 (B) For purposes of this paragraph, the cutoff date shall be the
10 last day of the calendar quarter within which the Franchise Tax
11 Board estimates it will have received timely filed original returns
12 claiming credits under this section and Section 23623 that
13 cumulatively total four hundred million dollars (\$400,000,000)
14 for all taxable years.

15 (2) The date a return is received shall be determined by the
16 Franchise Tax Board.

17 (3) (A) The determinations of the Franchise Tax Board with
18 respect to the cutoff date, the date a return is received, and whether
19 a return has been timely filed for purposes of this subdivision may
20 not be reviewed in any administrative or judicial proceeding.

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

27 (4) The Franchise Tax Board shall periodically provide notice
28 on its *Internet* Web site with respect to the amount of credit under
29 this section and Section 23623 claimed on timely filed original
30 returns received by the Franchise Tax Board.

31 (h) (1) The Franchise Tax Board may prescribe rules,
32 guidelines, or procedures necessary or appropriate to carry out the
33 purposes of this section, including any guidelines regarding the
34 limitation on total credits allowable under this section and Section
35 23623 and guidelines necessary to avoid the application of
36 paragraph (2) of subdivision (f) through splitups, shell corporations,
37 partnerships, tiered ownership structures, or otherwise.

38 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
39 Division 3 of Title 2 of the Government Code does 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 (i) This section shall remain in effect only until December 1 of
4 the calendar year after the year of the cutoff date, and as of that
5 December 1 is repealed.

6 SEC. 3. Section 23623 of the Revenue and Taxation Code, as
7 added by Section 8 of Chapter 10 of the Third Extraordinary
8 Session of the Statutes of 2009, is repealed.

9 SEC. 4. Section 23623 of the Revenue and Taxation Code, as
10 added by Section 8 of Chapter 17 of the Third Extraordinary
11 Session of the Statutes of 2009, is amended to read:

12 23623. (a) (1) Except as provided in paragraph (2), for each
13 taxable year beginning on or after January 1, 2009, there shall be
14 allowed as a credit against the “tax,” as defined in Section 23036,
15 three thousand dollars (\$3,000) for each net increase in qualified
16 full-time employees, as specified in subdivision (c), hired during
17 the taxable year by a qualified employer.

18 (2) (A) For each taxable year beginning on or after January 1,
19 2011, there shall be allowed as a credit against the “tax,” as defined
20 in Section 23036, five thousand dollars (\$5,000) for each net
21 increase in qualified full-time employees, as specified in
22 subdivision (c), hired during the taxable year by a qualified
23 employer.

24 (B) For purposes of this paragraph, a “qualified full-time
25 employee” means an individual who meets the criteria of paragraph
26 (2) of subdivision (b), and who is *either* an ex-offender who was
27 convicted of a felony, *or a person who has been unemployed for*
28 *12 or more consecutive months prior to being hired by a qualified*
29 *employer.* A “qualified full-time employee” shall not include a sex
30 offender pursuant to Section 290 of the Penal Code, or the
31 equivalent in another state or territory, under military law, or under
32 federal law, or a person convicted of a serious or violent felony,
33 as defined in subdivision (c) of Section 667.5 and subdivision (c)
34 of Section 1192.7 of the Penal Code.

35 (b) For purposes of this section:

36 (1) “Acquired” includes any gift, inheritance, transfer incident
37 to divorce, or any other transfer, whether or not for consideration.

38 (2) “Qualified full-time employee” means:

1 (A) A qualified employee who was paid qualified wages during
2 the taxable year by the qualified employer for services of not less
3 than an average of 35 hours per week.

4 (B) A qualified employee who was a salaried employee and
5 was paid compensation during the taxable year for full-time
6 employment, within the meaning of Section 515 of the Labor Code,
7 by the qualified employer.

8 (3) A “qualified employee” shall not include any of the
9 following:

10 (A) An employee certified as a qualified employee in an
11 enterprise zone designated in accordance with Chapter 12.8
12 (commencing with Section 7070) of Division 7 of Title 1 of the
13 Government Code.

14 (B) An employee certified as a qualified disadvantaged
15 individual in a manufacturing enhancement area designated in
16 accordance with Section 7073.8 of the Government Code.

17 (C) An employee certified as a qualified employee in a targeted
18 tax area designated in accordance with Section 7097 of the
19 Government Code.

20 (D) An employee certified as a qualified disadvantaged
21 individual or a qualified displaced employee in a local agency
22 military base recovery area (LAMBRA) designated in accordance
23 with Chapter 12.97 (commencing with Section 7105) of Division
24 7 of Title 1 of the Government Code.

25 (E) An employee whose wages are included in calculating any
26 other credit allowed under this part.

27 ~~(4) (A) For taxable years beginning on or after January 1, 2009,~~
28 ~~and before January 1, 2011,~~

29 (4) A “qualified employer” means a taxpayer that, as of the last
30 day of the preceding taxable year, employed a total of 20 or fewer
31 employees.

32 ~~(B) For taxable years beginning on or after January 1, 2011,~~
33 ~~“qualified employer” means a taxpayer that, as of the last day of~~
34 ~~the preceding taxable year, employed a total of 30 or fewer~~
35 ~~employees.~~

36 (5) “Qualified wages” means wages subject to Division 6
37 (commencing with Section 13000) of the Unemployment Insurance
38 Code.

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

1 (A) In the case of a full-time employee paid hourly qualified
2 wages, “annual full-time equivalent” means the total number of
3 hours worked for the taxpayer by the employee (not to exceed
4 2,000 hours per employee) divided by 2,000.

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

8 (c) The net increase in qualified full-time employees of a
9 qualified employer shall be determined as provided by this
10 subdivision:

11 (1) (A) The net increase in qualified full-time employees shall
12 be determined on an annual full-time equivalent basis by
13 subtracting from the amount determined in subparagraph (C) the
14 amount determined in subparagraph (B).

15 (B) The total number of qualified full-time employees employed
16 in the preceding taxable year by the taxpayer and by any trade or
17 business acquired by the taxpayer during the preceding taxable
18 year.

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

22 (2) For taxpayers who first commence doing business in this
23 state during the taxable year, the number of full-time employees
24 for the immediately preceding prior taxable year shall be zero.

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

29 (e) Any deduction otherwise allowed under this part for qualified
30 wages shall not be reduced by the amount of the credit allowed
31 under this section.

32 (f) For purposes of this section:

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

36 (2) In determining whether the taxpayer has first commenced
37 doing business in this state during the taxable year, the provisions
38 of subdivision (f) of Section 17276, without application of
39 paragraph (7) of that subdivision, shall apply.

1 (g) (1) (A) Credit under this section and Section 17053.80 shall
2 be allowed only for credits claimed on timely filed original returns
3 received by the Franchise Tax Board on or before the cutoff date
4 established by the Franchise Tax Board.

5 (B) For purposes of this paragraph, the cutoff date shall be the
6 last day of the calendar quarter within which the Franchise Tax
7 Board estimates it will have received timely filed original returns
8 claiming credits under this section and Section 17053.80 that
9 cumulatively total four hundred million dollars (\$400,000,000)
10 for all taxable years.

11 (2) The date a return is received shall be determined by the
12 Franchise Tax Board.

13 (3) (A) The determinations of the Franchise Tax Board with
14 respect to the cutoff date, the date a return is received, and whether
15 a return has been timely filed for purposes of this subdivision may
16 not be reviewed in any administrative or judicial proceeding.

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

23 (4) The Franchise Tax Board shall periodically provide notice
24 on its *Internet* Web site with respect to the amount of credit under
25 this section and Section 17053.80 claimed on timely filed original
26 returns received by the Franchise Tax Board.

27 (h) (1) The Franchise Tax Board may prescribe rules,
28 guidelines, or procedures necessary or appropriate to carry out the
29 purposes of this section, including any guidelines regarding the
30 limitation on total credits allowable under this section and Section
31 17053.80 and guidelines necessary to avoid the application of
32 paragraph (2) of subdivision (f) through splitups, shell corporations,
33 partnerships, tiered ownership structures, or otherwise.

34 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
35 Division 3 of Title 2 of the Government Code does not apply to
36 any standard, criterion, procedure, determination, rule, notice, or
37 guideline established or issued by the Franchise Tax Board
38 pursuant to this section.

1 (i) This section shall remain in effect only until December 1 of
2 the calendar year after the year of the cutoff date, and as of that
3 December 1 is repealed.

4 SEC. 5. This act provides for a tax levy within the meaning of
5 Article IV of the Constitution and shall go into immediate effect.

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