
Introduced by Senator Aanestad

February 3, 2010

An act to amend Sections 17053.74 and 23622.7 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 939, as introduced, Aanestad. Income and corporation tax credits: Oroville enterprise zone.

The Personal Income Tax Law and the Corporation Tax Law allow a taxpayer to claim certain tax incentives for activities conducted in an enterprise zone, including a credit in an amount equal to the specified percentage of wages paid during the taxable year to a qualified employee, as defined, who is employed by the taxpayer during the taxable year in an enterprise zone.

This bill would authorize the sale of a tax credit by a taxpayer where that credit is attributable to the percentage of wages paid by a taxpayer during a taxable year to a qualified employee employed in the City of Oroville enterprise zone, to an unrelated party.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Oroville.

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. It is the intent of the Legislature that any income
- 2 derived from the sale of tax credits made pursuant to Sections
- 3 17053.74 and 23622.7 of the Revenue and Taxation Code be used

1 by the selling businesses for the expansion of business activities,
2 the hiring of staff, the purchase of capital, or for any other business
3 operational expense related to maintaining the businesses in within
4 the Oroville enterprise zone.

5 SEC. 2. Section 17053.74 of the Revenue and Taxation Code
6 is amended to read:

7 17053.74. (a) There shall be allowed a credit against the “net
8 tax” (as defined in Section 17039) to a taxpayer who employs a
9 qualified employee in an enterprise zone during the taxable year.
10 The credit shall be equal to the sum of each of the following:

11 (1) Fifty percent of qualified wages in the first year of
12 employment.

13 (2) Forty percent of qualified wages in the second year of
14 employment.

15 (3) Thirty percent of qualified wages in the third year of
16 employment.

17 (4) Twenty percent of qualified wages in the fourth year of
18 employment.

19 (5) Ten percent of qualified wages in the fifth year of
20 employment.

21 (b) For purposes of this section:

22 (1) “Qualified wages” means:

23 (A) (i) Except as provided in clause (ii), that portion of wages
24 paid or incurred by the taxpayer during the taxable year to qualified
25 employees that does not exceed 150 percent of the minimum wage.

26 (ii) For up to 1,350 qualified employees who are employed by
27 the taxpayer in the Long Beach Enterprise Zone in aircraft
28 manufacturing activities described in Codes 3721 to 3728,
29 inclusive, and Code 3812 of the Standard Industrial Classification
30 (SIC) Manual published by the United States Office of
31 Management and Budget, 1987 edition, “qualified wages” means
32 that portion of hourly wages that does not exceed 202 percent of
33 the minimum wage.

34 (B) Wages received during the 60-month period beginning with
35 the first day the employee commences employment with the
36 taxpayer. Reemployment in connection with any increase, including
37 a regularly occurring seasonal increase, in the trade or business
38 operations of the taxpayer does not constitute commencement of
39 employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) “Minimum wage” means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) “Zone expiration date” means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) “Qualified employee” means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer’s trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee’s commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee’s commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

1 (III) Immediately preceding the qualified employee's
2 commencement of employment with the taxpayer, was an
3 economically disadvantaged individual 14 years of age or older.

4 (IV) Immediately preceding the qualified employee's
5 commencement of employment with the taxpayer, was a dislocated
6 worker who meets any of the following:

7 (aa) Has been terminated or laid off or who has received a notice
8 of termination or layoff from employment, is eligible for or has
9 exhausted entitlement to unemployment insurance benefits, and
10 is unlikely to return to his or her previous industry or occupation.

11 (bb) Has been terminated or has received a notice of termination
12 of employment as a result of any permanent closure or any
13 substantial layoff at a plant, facility, or enterprise, including an
14 individual who has not received written notification but whose
15 employer has made a public announcement of the closure or layoff.

16 (cc) Is long-term unemployed and has limited opportunities for
17 employment or reemployment in the same or a similar occupation
18 in the area in which the individual resides, including an individual
19 55 years of age or older who may have substantial barriers to
20 employment by reason of age.

21 (dd) Was self-employed (including farmers and ranchers) and
22 is unemployed as a result of general economic conditions in the
23 community in which he or she resides or because of natural
24 disasters.

25 (ee) Was a civilian employee of the Department of Defense
26 employed at a military installation being closed or realigned under
27 the Defense Base Closure and Realignment Act of 1990.

28 (ff) Was an active member of the armed forces or National
29 Guard as of September 30, 1990, and was either involuntarily
30 separated or separated pursuant to a special benefits program.

31 (gg) Is a seasonal or migrant worker who experiences chronic
32 seasonal unemployment and underemployment in the agriculture
33 industry, aggravated by continual advancements in technology and
34 mechanization.

35 (hh) Has been terminated or laid off, or has received a notice
36 of termination or layoff, as a consequence of compliance with the
37 Clean Air Act.

38 (V) Immediately preceding the qualified employee's
39 commencement of employment with the taxpayer, was a disabled
40 individual who is eligible for or enrolled in, or has completed a

1 state rehabilitation plan or is a service-connected disabled veteran,
2 veteran of the Vietnam era, or veteran who is recently separated
3 from military service.

4 (VI) Immediately preceding the qualified employee's
5 commencement of employment with the taxpayer, was an
6 ex-offender. An individual shall be treated as convicted if he or
7 she was placed on probation by a state court without a finding of
8 guilt.

9 (VII) Immediately preceding the qualified employee's
10 commencement of employment with the taxpayer, was a person
11 eligible for or a recipient of any of the following:

12 (aa) Federal Supplemental Security Income benefits.

13 (bb) Aid to Families with Dependent Children.

14 (cc) Food stamps.

15 (dd) State and local general assistance.

16 (VIII) Immediately preceding the qualified employee's
17 commencement of employment with the taxpayer, was a member
18 of a federally recognized Indian tribe, band, or other group of
19 Native American descent.

20 (IX) Immediately preceding the qualified employee's
21 commencement of employment with the taxpayer, was a resident
22 of a targeted employment area, as defined in Section 7072 of the
23 Government Code.

24 (X) An employee who qualified the taxpayer for the enterprise
25 zone hiring credit under former Section 17053.8 or the program
26 area hiring credit under former Section 17053.11.

27 (XI) Immediately preceding the qualified employee's
28 commencement of employment with the taxpayer, was a member
29 of a targeted group, as defined in Section 51(d) of the Internal
30 Revenue Code, or its successor.

31 (B) Priority for employment shall be provided to an individual
32 who is enrolled in a qualified program under the federal Job
33 Training Partnership Act or the Greater Avenues for Independence
34 Act of 1985 or who is eligible as a member of a targeted group
35 under the Work Opportunity Tax Credit (Section 51 of the Internal
36 Revenue Code), or its successor.

37 (5) "Taxpayer" means a person or entity engaged in a trade or
38 business within an enterprise zone designated pursuant to Chapter
39 12.8 (commencing with Section 7070) of the Government Code.

1 (6) “Seasonal employment” means employment by a taxpayer
2 that has regular and predictable substantial reductions in trade or
3 business operations.

4 (c) The taxpayer shall do both of the following:

5 (1) Obtain from the Employment Development Department, as
6 permitted by federal law, the local county or city Job Training
7 Partnership Act administrative entity, the local county GAIN office
8 or social services agency, or the local government administering
9 the enterprise zone, a certification which provides that a qualified
10 employee meets the eligibility requirements specified in clause
11 (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The
12 Employment Development Department may provide preliminary
13 screening and referral to a certifying agency. The Employment
14 Development Department shall develop a form for this purpose.
15 The Department of Housing and Community Development shall
16 develop regulations governing the issuance of certificates by local
17 governments pursuant to subdivision (a) of Section 7086 of the
18 Government Code.

19 (2) Retain a copy of the certification and provide it upon request
20 to the Franchise Tax Board.

21 (d) (1) For purposes of this section:

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

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

29 (C) Principles that apply in the case of controlled groups of
30 corporations, as specified in subdivision (d) of Section 23622.7,
31 shall apply with respect to determining employment.

32 (2) If an employer acquires the major portion of a trade or
33 business of another employer (hereinafter in this paragraph referred
34 to as the “predecessor”) or the major portion of a separate unit of
35 a trade or business of a predecessor, then, for purposes of applying
36 this section (other than subdivision (e)) for any calendar year
37 ending after that acquisition, the employment relationship between
38 a qualified employee and an employer shall not be treated as
39 terminated if the employee continues to be employed in that trade
40 or business.

(e) (1) (A) If the employment, other than seasonal employment, of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, 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.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the taxpayer, 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 qualified employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified 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 taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified 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.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

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

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment 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 qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

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

(3) Any 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.

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

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

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

7 (g) For purposes of this section, “enterprise zone” means an
8 area designated as an enterprise zone pursuant to Chapter 12.8
9 (commencing with Section 7070) of Division 7 of Title 1 of the
10 Government Code.

11 (h) The credit allowable under this section shall be reduced by
12 the credit allowed under Sections 17053.10, 17053.17 and 17053.46
13 claimed for the same employee. The credit shall also be reduced
14 by the federal credit allowed under Section 51 of the Internal
15 Revenue Code.

16 In addition, any deduction otherwise allowed under this part for
17 the wages or salaries paid or incurred by the taxpayer upon which
18 the credit is based shall be reduced by the amount of the credit,
19 prior to any reduction required by subdivision (i) or (j).

20 (i) In the case where the credit otherwise allowed under this
21 section exceeds the “net tax” for the taxable year, that portion of
22 the credit that exceeds the “net tax” may be carried over and added
23 to the credit, if any, in succeeding taxable years, until the credit is
24 exhausted. The credit shall be applied first to the earliest taxable
25 years possible.

26 (j) (1) The amount of the credit otherwise allowed under this
27 section and Section 17053.70, including any credit carryover from
28 prior years, that may reduce the “net tax” for the taxable year shall
29 not exceed the amount of tax which would be imposed on the
30 taxpayer’s business income attributable to the enterprise zone
31 determined as if that attributable income represented all of the
32 income of the taxpayer subject to tax under this part.

33 (2) Attributable income shall be that portion of the taxpayer’s
34 California source business income that is apportioned to the
35 enterprise zone. For that purpose, the taxpayer’s business income
36 attributable to sources in this state first shall be determined in
37 accordance with Chapter 17 (commencing with Section 25101) of
38 Part 11. That business income shall be further apportioned to the
39 enterprise zone in accordance with Article 2 (commencing with

1 Section 25120) of Chapter 17 of Part 11, modified for purposes
2 of this section in accordance with paragraph (3).

3 (3) Business income shall be apportioned to the enterprise zone
4 by multiplying the total California business income of the taxpayer
5 by a fraction, the numerator of which is the property factor plus
6 the payroll factor, and the denominator of which is two. For
7 purposes of this paragraph:

8 (A) The property factor is a fraction, the numerator of which is
9 the average value of the taxpayer's real and tangible personal
10 property owned or rented and used in the enterprise zone during
11 the taxable year, and the denominator of which is the average value
12 of all the taxpayer's real and tangible personal property owned or
13 rented and used in this state during the taxable year.

14 (B) The payroll factor is a fraction, the numerator of which is
15 the total amount paid by the taxpayer in the enterprise zone during
16 the taxable year for compensation, and the denominator of which
17 is the total compensation paid by the taxpayer in this state during
18 the taxable year.

19 (4) The portion of any credit remaining, if any, after application
20 of this subdivision, shall be carried over to succeeding taxable
21 years, as if it were an amount exceeding the "net tax" for the
22 taxable year, as provided in subdivision (i).

23 *(k) (1) Notwithstanding any other law, a taxpayer whose tax*
24 *credit allowed under this section is derived from the employment*
25 *of a qualified employee within the Oroville enterprise zone,*
26 *established pursuant to Chapter 12.8 (commencing with Section*
27 *7070) of Division 7 of Title 1 of the Government Code, may sell*
28 *that credit to an unrelated party.*

29 *(2) The taxpayer shall report to the Franchise Tax Board prior*
30 *to the sale of the credit, in the form and manner specified by the*
31 *Franchise Tax Board, all required information regarding the*
32 *purchase and sale of the credit, including the social security or*
33 *other taxpayer identification number of the unrelated party to*
34 *whom the credit has been sold, the face amount of the credit sold,*
35 *and the amount of consideration received by the taxpayer for the*
36 *sale of the credit.*

37 *(3) A credit may be sold pursuant to this subdivision to any*
38 *unrelated taxpayer, but shall not be resold by the unrelated party*
39 *to another taxpayer or other party.*

1 (4) A party that has acquired tax credits under this section shall
2 be subject to the requirements of this section.

3 (5) In no event may a taxpayer assign or sell any tax credit to
4 the extent the tax credit allowed by this section is claimed on any
5 tax return of the taxpayer.

6 (6) In the event that both the taxpayer originally allocated a
7 credit under this section and a taxpayer to whom the credit has
8 been sold both claim the same amount of credit on their tax returns,
9 the Franchise Tax Board may disallow the credit of either taxpayer,
10 so long as the statute of limitations upon assessment remains open.

11 ~~(k)~~
12 ~~(l) The changes amendments made to this section by the act~~
13 ~~adding this subdivision~~ Section 5.5 of Chapter 609 of the Statutes
14 of 1997 shall apply to taxable years beginning on or after January
15 1, 1997.

16 SEC. 3. Section 23622.7 of the Revenue and Taxation Code
17 is amended to read:

18 23622.7. (a) There shall be allowed a credit against the “tax”
19 (as defined by Section 23036) to a taxpayer who employs a
20 qualified employee in an enterprise zone during the taxable year.
21 The credit shall be equal to the sum of each of the following:

22 (1) Fifty percent of qualified wages in the first year of
23 employment.

24 (2) Forty percent of qualified wages in the second year of
25 employment.

26 (3) Thirty percent of qualified wages in the third year of
27 employment.

28 (4) Twenty percent of qualified wages in the fourth year of
29 employment.

30 (5) Ten percent of qualified wages in the fifth year of
31 employment.

32 (b) For purposes of this section:

33 (1) “Qualified wages” means:

34 (A) (i) Except as provided in clause (ii), that portion of wages
35 paid or incurred by the taxpayer during the taxable year to qualified
36 employees that does not exceed 150 percent of the minimum wage.

37 (ii) For up to 1,350 qualified employees who are employed by
38 the taxpayer in the Long Beach Enterprise Zone in aircraft
39 manufacturing activities described in Codes 3721 to 3728,
40 inclusive, and Code 3812 of the Standard Industrial Classification

(SIC) Manual published by the United States Office of Management and Budget, 1987 edition, “qualified wages” means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) “Minimum wage” means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) “Zone expiration date” means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) “Qualified employee” means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer’s trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee’s commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or

1 services funded by the federal Job Training Partnership Act, or its
2 successor.

3 (II) Immediately preceding the qualified employee's
4 commencement of employment with the taxpayer, was a person
5 eligible to be a voluntary or mandatory registrant under the Greater
6 Avenues for Independence Act of 1985 (GAIN) provided for
7 pursuant to Article 3.2 (commencing with Section 11320) of
8 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
9 Code, or its successor.

10 (III) Immediately preceding the qualified employee's
11 commencement of employment with the taxpayer, was an
12 economically disadvantaged individual 14 years of age or older.

13 (IV) Immediately preceding the qualified employee's
14 commencement of employment with the taxpayer, was a dislocated
15 worker who meets any of the following:

16 (aa) Has been terminated or laid off or who has received a notice
17 of termination or layoff from employment, is eligible for or has
18 exhausted entitlement to unemployment insurance benefits, and
19 is unlikely to return to his or her previous industry or occupation.

20 (bb) Has been terminated or has received a notice of termination
21 of employment as a result of any permanent closure or any
22 substantial layoff at a plant, facility, or enterprise, including an
23 individual who has not received written notification but whose
24 employer has made a public announcement of the closure or layoff.

25 (cc) Is long-term unemployed and has limited opportunities for
26 employment or reemployment in the same or a similar occupation
27 in the area in which the individual resides, including an individual
28 55 years of age or older who may have substantial barriers to
29 employment by reason of age.

30 (dd) Was self-employed (including farmers and ranchers) and
31 is unemployed as a result of general economic conditions in the
32 community in which he or she resides or because of natural
33 disasters.

34 (ee) Was a civilian employee of the Department of Defense
35 employed at a military installation being closed or realigned under
36 the Defense Base Closure and Realignment Act of 1990.

37 (ff) Was an active member of the armed forces or National
38 Guard as of September 30, 1990, and was either involuntarily
39 separated or separated pursuant to a special benefits program.

1 (gg) Is a seasonal or migrant worker who experiences chronic
2 seasonal unemployment and underemployment in the agriculture
3 industry, aggravated by continual advancements in technology and
4 mechanization.

5 (hh) Has been terminated or laid off, or has received a notice
6 of termination or layoff, as a consequence of compliance with the
7 Clean Air Act.

8 (V) Immediately preceding the qualified employee's
9 commencement of employment with the taxpayer, was a disabled
10 individual who is eligible for or enrolled in, or has completed a
11 state rehabilitation plan or is a service-connected disabled veteran,
12 veteran of the Vietnam era, or veteran who is recently separated
13 from military service.

14 (VI) Immediately preceding the qualified employee's
15 commencement of employment with the taxpayer, was an
16 ex-offender. An individual shall be treated as convicted if he or
17 she was placed on probation by a state court without a finding of
18 guilt.

19 (VII) Immediately preceding the qualified employee's
20 commencement of employment with the taxpayer, was a person
21 eligible for or a recipient of any of the following:

22 (aa) Federal Supplemental Security Income benefits.

23 (bb) Aid to Families with Dependent Children.

24 (cc) Food stamps.

25 (dd) State and local general assistance.

26 (VIII) Immediately preceding the qualified employee's
27 commencement of employment with the taxpayer, was a member
28 of a federally recognized Indian tribe, band, or other group of
29 Native American descent.

30 (IX) Immediately preceding the qualified employee's
31 commencement of employment with the taxpayer, was a resident
32 of a targeted employment area (as defined in Section 7072 of the
33 Government Code).

34 (X) An employee who qualified the taxpayer for the enterprise
35 zone hiring credit under former Section 23622 or the program area
36 hiring credit under former Section 23623.

37 (XI) Immediately preceding the qualified employee's
38 commencement of employment with the taxpayer, was a member
39 of a targeted group, as defined in Section 51(d) of the Internal
40 Revenue Code, or its successor.

1 (B) Priority for employment shall be provided to an individual
2 who is enrolled in a qualified program under the federal Job
3 Training Partnership Act or the Greater Avenues for Independence
4 Act of 1985 or who is eligible as a member of a targeted group
5 under the Work Opportunity Tax Credit (Section 51 of the Internal
6 Revenue Code), or its successor.

7 (5) "Taxpayer" means a corporation engaged in a trade or
8 business within an enterprise zone designated pursuant to Chapter
9 12.8 (commencing with Section 7070) of Division 7 of Title 1 of
10 the Government Code.

11 (6) "Seasonal employment" means employment by a taxpayer
12 that has regular and predictable substantial reductions in trade or
13 business operations.

14 (c) The taxpayer shall do both of the following:

15 (1) Obtain from the Employment Development Department, as
16 permitted by federal law, the local county or city Job Training
17 Partnership Act administrative entity, the local county GAIN office
18 or social services agency, or the local government administering
19 the enterprise zone, a certification that provides that a qualified
20 employee meets the eligibility requirements specified in clause
21 (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The
22 Employment Development Department may provide preliminary
23 screening and referral to a certifying agency. The Employment
24 Development Department shall develop a form for this purpose.
25 The Department of Housing and Community Development shall
26 develop regulations governing the issuance of certificates by local
27 governments pursuant to subdivision (a) of Section 7086 of the
28 Government Code.

29 (2) Retain a copy of the certification and provide it upon request
30 to the Franchise Tax Board.

31 (d) (1) For purposes of this section:

32 (A) All employees of all corporations which are members of
33 the same controlled group of corporations shall be treated as
34 employed by a single taxpayer.

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

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

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

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

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

19 (e) (1) (A) If the employment, other than seasonal employment,
20 of any qualified employee with respect to whom qualified wages
21 are taken into account under subdivision (a) is terminated by the
22 taxpayer at any time during the first 270 days of that employment,
23 whether or not consecutive, or before the close of the 270th
24 calendar day after the day in which that employee completes 90
25 days of employment with the taxpayer, the tax imposed by this
26 part for the taxable year in which that employment is terminated
27 shall be increased by an amount equal to the credit allowed under
28 subdivision (a) for that taxable year and all prior taxable years
29 attributable to qualified wages paid or incurred with respect to that
30 employee.

31 (B) If the seasonal employment of any qualified employee, with
32 respect to whom qualified wages are taken into account under
33 subdivision (a) is not continued by the taxpayer for a period of
34 270 days of employment during the 60-month period beginning
35 with the day the qualified employee commences seasonal
36 employment with the taxpayer, the tax imposed by this part, for
37 the taxable year that includes the 60th month following the month
38 in which the qualified employee commences seasonal employment
39 with the taxpayer, shall be increased by an amount equal to the
40 credit allowed under subdivision (a) for that taxable year and all

1 prior taxable years attributable to qualified wages paid or incurred
2 with respect to that qualified employee.

3 (2) (A) Subparagraph (A) of paragraph (1) shall not apply to
4 any of the following:

5 (i) A termination of employment of a qualified employee who
6 voluntarily leaves the employment of the taxpayer.

7 (ii) A termination of employment of a qualified employee who,
8 before the close of the period referred to in subparagraph (A) of
9 paragraph (1), becomes disabled and unable to perform the services
10 of that employment, unless that disability is removed before the
11 close of that period and the taxpayer fails to offer reemployment
12 to that employee.

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

17 (iv) A termination of employment of a qualified employee due
18 to a substantial reduction in the trade or business operations of the
19 taxpayer.

20 (v) A termination of employment of a qualified employee, if
21 that employee is replaced by other qualified employees so as to
22 create a net increase in both the number of employees and the
23 hours of employment.

24 (B) Subparagraph (B) of paragraph (1) shall not apply to any
25 of the following:

26 (i) A failure to continue the seasonal employment of a qualified
27 employee who voluntarily fails to return to the seasonal
28 employment of the taxpayer.

29 (ii) A failure to continue the seasonal employment of a qualified
30 employee who, before the close of the period referred to in
31 subparagraph (B) of paragraph (1), becomes disabled and unable
32 to perform the services of that seasonal employment, unless that
33 disability is removed before the close of that period and the
34 taxpayer fails to offer seasonal employment to that qualified
35 employee.

36 (iii) A failure to continue the seasonal employment of a qualified
37 employee, if it is determined that the failure to continue the
38 seasonal employment was due to the misconduct (as defined in
39 Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California
40 Code of Regulations) of that qualified employee.

1 (iv) A failure to continue seasonal employment of a qualified
2 employee due to a substantial reduction in the regular seasonal
3 trade or business operations of the taxpayer.

4 (v) A failure to continue the seasonal employment of a qualified
5 employee, if that qualified employee is replaced by other qualified
6 employees so as to create a net increase in both the number of
7 seasonal employees and the hours of seasonal employment.

8 (C) For purposes of paragraph (1), the employment relationship
9 between the taxpayer and a qualified employee shall not be treated
10 as terminated by either of the following:

11 (i) By a transaction to which Section 381(a) of the Internal
12 Revenue Code applies, if the qualified employee continues to be
13 employed by the acquiring corporation.

14 (ii) By reason of a mere change in the form of conducting the
15 trade or business of the taxpayer, if the qualified employee
16 continues to be employed in that trade or business and the taxpayer
17 retains a substantial interest in that trade or business.

18 (3) Any 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 (f) Rules similar to the rules provided in Section 46(e) and (h)
22 of the Internal Revenue Code shall apply to both of the following:

23 (1) An organization to which Section 593 of the Internal
24 Revenue Code applies.

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

27 (g) For purposes of this section, “enterprise zone” means an
28 area designated as an enterprise zone pursuant to Chapter 12.8
29 (commencing with Section 7070) of Division 7 of Title 1 of the
30 Government Code.

31 (h) The credit allowable under this section shall be reduced by
32 the credit allowed under Sections 23623.5, 23625, and 23646
33 claimed for the same employee. The credit shall also be reduced
34 by the federal credit allowed under Section 51 of the Internal
35 Revenue Code.

36 In addition, any deduction otherwise allowed under this part for
37 the wages or salaries paid or incurred by the taxpayer upon which
38 the credit is based shall be reduced by the amount of the credit,
39 prior to any reduction required by subdivision (i) or (j).

1 (i) In the case where the credit otherwise allowed under this
2 section exceeds the “tax” for the taxable year, that portion of the
3 credit that exceeds the “tax” may be carried over and added to the
4 credit, if any, in succeeding taxable years, until the credit is
5 exhausted. The credit shall be applied first to the earliest taxable
6 years possible.

7 (j) (1) The amount of the credit otherwise allowed under this
8 section and Section 23612.2, including any credit carryover from
9 prior years, that may reduce the “tax” for the taxable year shall
10 not exceed the amount of tax which would be imposed on the
11 taxpayer’s business income attributable to the enterprise zone
12 determined as if that attributable income represented all of the
13 income of the taxpayer subject to tax under this part.

14 (2) Attributable income shall be that portion of the taxpayer’s
15 California source business income that is apportioned to the
16 enterprise zone. For that purpose, the taxpayer’s business
17 attributable to sources in this state first shall be determined in
18 accordance with Chapter 17 (commencing with Section 25101).
19 That business income shall be further apportioned to the enterprise
20 zone in accordance with Article 2 (commencing with Section
21 25120) of Chapter 17, modified for purposes of this section in
22 accordance with paragraph (3).

23 (3) Business income shall be apportioned to the enterprise zone
24 by multiplying the total California business income of the taxpayer
25 by a fraction, the numerator of which is the property factor plus
26 the payroll factor, and the denominator of which is two. For
27 purposes of this paragraph:

28 (A) The property factor is a fraction, the numerator of which is
29 the average value of the taxpayer’s real and tangible personal
30 property owned or rented and used in the enterprise zone during
31 the income year, and the denominator of which is the average value
32 of all the taxpayer’s real and tangible personal property owned or
33 rented and used in this state during the income year.

34 (B) The payroll factor is a fraction, the numerator of which is
35 the total amount paid by the taxpayer in the enterprise zone during
36 the income year for compensation, and the denominator of which
37 is the total compensation paid by the taxpayer in this state during
38 the income year.

39 (4) The portion of any credit remaining, if any, after application
40 of this subdivision, shall be carried over to succeeding taxable

1 years, as if it were an amount exceeding the “tax” for the taxable
2 year, as provided in subdivision (i).

3 *(k) (1) Notwithstanding any other law, a taxpayer whose tax*
4 *credit allowed under this section is derived from the employment*
5 *of a qualified employee within the Oroville enterprise zone,*
6 *established pursuant to Chapter 12.8 (commencing with Section*
7 *7070) of Division 7 of Title 1 of the Government Code, may sell*
8 *that credit to an unrelated party.*

9 *(2) The taxpayer shall report to the Franchise Tax Board prior*
10 *to the sale of the credit, in the form and manner specified by the*
11 *Franchise Tax Board, all required information regarding the*
12 *purchase and sale of the credit, including the social security or*
13 *other taxpayer identification number of the unrelated party to*
14 *whom the credit has been sold, the face amount of the credit sold,*
15 *and the amount of consideration received by the taxpayer for the*
16 *sale of the credit.*

17 *(3) A credit may be sold pursuant to this subdivision to any*
18 *unrelated taxpayer, but shall not be resold by the unrelated party*
19 *to another taxpayer or other party.*

20 *(4) A party that has acquired tax credits under this section shall*
21 *be subject to the requirements of this section.*

22 *(5) In no event may a taxpayer assign or sell any tax credit to*
23 *the extent the tax credit allowed by this section is claimed on any*
24 *tax return of the taxpayer.*

25 *(6) In the event that both the taxpayer originally allocated a*
26 *credit under this section and a taxpayer to whom the credit has*
27 *been sold both claim the same amount of credit on their tax returns,*
28 *the Franchise Tax Board may disallow the credit of either taxpayer,*
29 *so long as the statute of limitations upon assessment remains open.*

30 ~~(k)~~

31 ~~(l) The changes amendments made to this section by the act~~
32 ~~adding this subdivision~~ *Section 12.5 of Chapter 609 of the Statutes*
33 *of 1997 shall apply to taxable years on or after January 1, 1997.*

34 SEC. 4. The Legislature finds and declares that a special law
35 is necessary and that a general law cannot be made applicable
36 within the meaning of Section 16 of Article IV of the California
37 Constitution because of the unique circumstances to the City of
38 Oroville.

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

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