

ASSEMBLY BILL

No. 236

Introduced by Assembly Member Swanson

February 3, 2011

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 236, as introduced, Swanson. Income taxes: credits: qualified 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, 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:

SECTION 1. Section 17053.80 of the Revenue and Taxation Code, as added by Section 3 of Chapter 10 of the Third Extraordinary Session of the Statutes of 2009, is repealed.

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

~~(b) For purposes of this section:~~

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

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

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

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

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

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

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

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

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

1 ~~(E) An employee whose wages are included in calculating any~~
2 ~~other credit allowed under this part.~~

3 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
4 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
5 ~~employees.~~

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

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

10 ~~(A) In the case of a full-time employee paid hourly qualified~~
11 ~~wages, “annual full-time equivalent” means the total number of~~
12 ~~hours worked for the taxpayer by the employee (not to exceed~~
13 ~~2,000 hours per employee) divided by 2,000.~~

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

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

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

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

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

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

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

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

40 ~~(f) For purposes of this section:~~

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

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

8 ~~(g) (1) (A) Credit under this section and Section 23623 shall~~
9 ~~be allowed only for credits claimed on timely filed original returns~~
10 ~~received by the Franchise Tax Board on or before the cut-off date~~
11 ~~established by the Franchise Tax Board.~~

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

18 ~~(2) The date a return is received shall be determined by the~~
19 ~~Franchise Tax Board.~~

20 ~~(3) (A) The determinations of the Franchise Tax Board with~~
21 ~~respect to the cut-off date, the date a return is received, and whether~~
22 ~~a return has been timely filed for purposes of this subdivision may~~
23 ~~not be reviewed in any administrative or judicial proceeding~~

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

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

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

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

~~(i) This section shall remain in effect only until December 1 of the calendar year after the year of the cut-off date, and as of that December 1 is repealed.~~

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

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

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

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

(b) For purposes of this section:

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

(2) “Qualified full-time employee” means *either of the following*:

1 (A) A qualified employee who was paid qualified wages by the
2 qualified employer for services of not less than an average of 35
3 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) ~~“Qualified”~~ A “qualified employer” means a taxpayer that,
28 as of the last day of the preceding taxable year, employed a total
29 of 20 or fewer employees.

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

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

34 (A) In the case of a full-time employee paid hourly qualified
35 wages, “annual full-time equivalent” means the total number of
36 hours worked for the taxpayer by the employee (not to exceed
37 2,000 hours per employee) divided by 2,000.

38 (B) In the case of a salaried full-time employee, “annual
39 full-time equivalent” means the total number of weeks worked for
40 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 ~~current~~ *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.

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

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

(B) For purposes of this paragraph, the ~~cut-off~~ *cutoff* date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 23623 that

1 cumulatively total four hundred million dollars (\$400,000,000)
2 for all taxable years.

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

5 (3) (A) The determinations of the Franchise Tax Board with
6 respect to the ~~cut-off~~ *cutoff* date, the date a return is received, and
7 whether a return has been timely filed for purposes of this
8 subdivision may not be reviewed in any administrative or judicial
9 ~~proceeding~~ *proceeding*.

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

16 (4) The Franchise Tax Board shall periodically provide notice
17 on its Web site with respect to the amount of credit under this
18 section and Section 23623 claimed on timely filed original returns
19 received by the Franchise Tax Board.

20 (h) (1) The Franchise Tax Board may prescribe rules, ~~guidelines~~
21 *guidelines*, or procedures necessary or appropriate to carry out the
22 purposes of this section, including any guidelines regarding the
23 limitation on total credits allowable under this section and Section
24 23623 and guidelines necessary to avoid the application of
25 paragraph (2) of subdivision (f) through ~~split-ups~~, *splitups*, shell
26 corporations, partnerships, tiered ownership structures, or
27 otherwise.

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

33 (i) This section shall remain in effect only until December 1 of
34 the calendar year after the year of the ~~cut-off~~ *cutoff* date, and as
35 of that December 1 is repealed.

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

39 ~~23623. (a) For each taxable year beginning on or after January~~
40 ~~1, 2009, there shall be allowed as a credit against the "tax," as~~

1 defined in Section 23036, three thousand dollars (\$3,000) for each
2 net increase in qualified full-time employees, as specified in
3 subdivision (c), hired during the taxable year by a qualified
4 employer.

5 (b) For purposes of this section:

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

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

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

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

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

18 (A) An employee certified as a qualified employee in an
19 enterprise zone designated in accordance with Chapter 12.8
20 (commencing with Section 7070) of Division 7 of Title 1 of the
21 Government Code.

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

25 (C) An employee certified as a qualified employee in a targeted
26 tax area designated in accordance with Section 7097 of the
27 Government Code.

28 (D) An employee certified as a qualified disadvantaged
29 individual or a qualified displaced employee in a local agency
30 military base recovery area (LAMBRA) designated in accordance
31 with Chapter 12.97 (commencing with Section 7105) of Division
32 7 of Title 1 of the Government Code.

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

35 (4) “Qualified employer” means a taxpayer that, as of the last
36 day of the preceding taxable year, employed a total of 20 or fewer
37 employees.

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

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

2 ~~(A) In the case of a full-time employee paid hourly qualified~~
3 ~~wages, “annual full-time equivalent” means the total number of~~
4 ~~hours worked for the taxpayer by the employee (not to exceed~~
5 ~~2,000 hours per employee) divided by 2,000.~~

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

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

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

16 ~~(B) The total number of qualified full-time employees employed~~
17 ~~in the preceding taxable year by the taxpayer and by any trade or~~
18 ~~business acquired by the taxpayer during the current taxable 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 succeeding seven years if necessary, until~~
28 ~~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 cut-off date~~
4 ~~established by the Franchise Tax Board.~~

5 ~~(B) For purposes of this paragraph, the cut-off 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 cut-off 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 Web site with respect to the amount of credit under this~~
25 ~~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, guidelines~~
28 ~~or procedures necessary or appropriate to carry out the purposes~~
29 ~~of this section, including any guidelines regarding the limitation~~
30 ~~on total credits allowable under this section and Section 17053.80~~
31 ~~and guidelines necessary to avoid the application of paragraph (2)~~
32 ~~of subdivision (f) through split-ups, shell corporations, partnerships,~~
33 ~~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.~~

~~(i) This section shall remain in effect only until December 1 of the calendar year after the year of the cut-off date, and as of that December 1 is repealed.~~

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

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

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

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

(b) For purposes of this section:

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

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

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

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

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

3 (A) An employee certified as a qualified employee in an
4 enterprise zone designated in accordance with Chapter 12.8
5 (commencing with Section 7070) of Division 7 of Title 1 of the
6 Government Code.

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

10 (C) An employee certified as a qualified employee in a targeted
11 tax area designated in accordance with Section 7097 of the
12 Government Code.

13 (D) An employee certified as a qualified disadvantaged
14 individual or a qualified displaced employee in a local agency
15 military base recovery area (LAMBRA) designated in accordance
16 with Chapter 12.97 (commencing with Section 7105) of Division
17 7 of Title 1 of the Government Code.

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

20 (4) ~~“Qualified”~~ A “*qualified employer*” means a taxpayer that,
21 as of the last day of the preceding taxable year, employed a total
22 of 20 or fewer employees.

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

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

27 (A) In the case of a full-time employee paid hourly qualified
28 wages, “annual full-time equivalent” means the total number of
29 hours worked for the taxpayer by the employee (not to exceed
30 2,000 hours per employee) divided by 2,000.

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

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

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

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

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

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

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

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

18 (f) For purposes of this section:

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

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

26 (g) (1) (A) Credit under this section and Section 17053.80 shall
27 be allowed only for credits claimed on timely filed original returns
28 received by the Franchise Tax Board on or before the ~~cut-off~~ *cutoff*
29 date established by the Franchise Tax Board.

30 (B) For purposes of this paragraph, the ~~cut-off~~ *cutoff* date shall
31 be the last day of the calendar quarter within which the Franchise
32 Tax Board estimates it will have received timely filed original
33 returns claiming credits under this section and Section 17053.80
34 that cumulatively total four hundred million dollars (\$400,000,000)
35 for all taxable years.

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

38 (3) (A) The determinations of the Franchise Tax Board with
39 respect to the ~~cut-off~~ *cutoff* date, the date a return is received, and
40 whether a return has been timely filed for purposes of this

1 subdivision may not be reviewed in any administrative or judicial
2 proceeding.

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

9 (4) The Franchise Tax Board shall periodically provide notice
10 on its Web site with respect to the amount of credit under this
11 section and Section 17053.80 claimed on timely filed original
12 returns received by the Franchise Tax Board.

13 (h) (1) The Franchise Tax Board may prescribe rules,
14 guidelines, or procedures necessary or appropriate to carry out the
15 purposes of this section, including any guidelines, regarding the
16 limitation on total credits allowable under this section and Section
17 17053.80 and guidelines necessary to avoid the application of
18 paragraph (2) of subdivision (f) through ~~split-ups~~, *splitups*, shell
19 corporations, partnerships, tiered ownership structures, or
20 otherwise.

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

26 (i) This section shall remain in effect only until December 1 of
27 the calendar year after the year of the ~~cut-off~~ *cutoff* date, and as
28 of that December 1 is repealed.

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