

ASSEMBLY BILL

No. 1596

Introduced by Assembly Member Cook

February 6, 2012

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 1596, as introduced, Cook. Income taxes: credits: hiring full-time 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, 2012, expand the definition of “qualified employer” to mean a taxpayer that employed 50 or fewer employees as of the last day of the preceding taxable year.

This bill would require the Franchise Tax Board to report to the Legislature, on or before January 1, 2015, the number of employers that were allowed a credit, the amount of credits utilized and carried over, and the average number of employees hired, in connection with the above-described provisions.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article

XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. 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- 3 Extraordinary Session of the Statutes of 2009, is repealed.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 ~~17053.80.—(a) For each taxable year beginning on or after~~
- 5 ~~January 1, 2009, there shall be allowed as a credit against the “net~~
- 6 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~
- 7 ~~for each net increase in qualified full-time employees, as specified~~
- 8 ~~in subdivision (c), hired during the taxable year by a qualified~~
- 9 ~~employer.~~
- 10 ~~(b) For purposes of this section:~~
- 11 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
- 12 ~~to divorce, or any other transfer, whether or not for consideration.~~
- 13 ~~(2) “Qualified full-time employee” means:~~
- 14 ~~(A) A qualified employee who was paid qualified wages by the~~
- 15 ~~qualified employer for services of not less than an average of 35~~
- 16 ~~hours per week.~~
- 17 ~~(B) A qualified employee who was a salaried employee and~~
- 18 ~~was paid compensation during the taxable year for full-time~~
- 19 ~~employment, within the meaning of Section 515 of the Labor Code,~~
- 20 ~~by the qualified employer.~~
- 21 ~~(3) A “qualified employee” shall not include any of the~~
- 22 ~~following:~~
- 23 ~~(A) An employee certified as a qualified employee in an~~
- 24 ~~enterprise zone designated in accordance with Chapter 12.8~~
- 25 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
- 26 ~~Government Code.~~
- 27 ~~(B) An employee certified as a qualified disadvantaged~~
- 28 ~~individual in a manufacturing enhancement area designated in~~
- 29 ~~accordance with Section 7073.8 of the Government Code.~~
- 30 ~~(C) An employee certified as a qualified employee in a targeted~~
- 31 ~~tax area designated in accordance with Section 7097 of the~~
- 32 ~~Government Code.~~

1 ~~(D) An employee certified as a qualified disadvantaged~~
2 ~~individual or a qualified displaced employee in a local agency~~
3 ~~military base recovery area (LAMBRA) designated in accordance~~
4 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
5 ~~7 of Title 1 of the Government Code.~~

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

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

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

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

15 ~~(A) In the case of a full-time employee paid hourly qualified~~
16 ~~wages, “annual full-time equivalent” means the total number of~~
17 ~~hours worked for the taxpayer by the employee (not to exceed~~
18 ~~2,000 hours per employee) divided by 2,000.~~

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

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

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

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

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

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

38 ~~(d) In the case where the credit allowed by this section exceeds~~
39 ~~the “net tax,” the excess may be carried over to reduce the “net~~

1 tax” in the following year, and succeeding seven years if necessary,
2 until the credit is exhausted.

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

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

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

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

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

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

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

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

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

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

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

1 (commencing with Section 7070) of Division 7 of Title 1 of the
2 Government Code.

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

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

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

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

16 (4) ~~“Qualified—~~(A) *For taxable years beginning on or after*
17 *January 1, 2009, and before January 1, 2012, “qualified employer”*
18 *means a taxpayer that, as of the last day of the preceding taxable*
19 *year, employed a total of 20 or fewer employees.*

20 (B) *For taxable years beginning on or after January 1, 2012,*
21 *“qualified employer” means a taxpayer that, as of the last day of*
22 *the preceding taxable year, employed a total of 50 or fewer*
23 *employees.*

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

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

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

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

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

38 (1) (A) The net increase in qualified full-time employees shall
39 be determined on an annual full-time equivalent basis by

1 subtracting from the amount determined in subparagraph (C) the
2 amount determined in subparagraph (B).

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

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

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

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

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

19 (f) For purposes of this section:

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

23 (2) In determining whether the taxpayer has first commenced
24 doing business in this state during the taxable year, the provisions
25 of subdivision (f) of Section ~~17276~~ 17276.20, without application
26 of paragraph (7) of that subdivision, shall apply.

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

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

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

39 (3) (A) The determinations of the Franchise Tax Board with
40 respect to the cut-off date, the date a return is received, and whether

1 a return has been timely filed for purposes of this subdivision may
2 not be reviewed in any administrative or judicial ~~proceeding~~
3 *proceeding*.

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

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

14 (h) (1) The Franchise Tax Board may prescribe rules, ~~guidelines~~
15 *guidelines*, or procedures necessary or appropriate to carry out the
16 purposes of this section, including any guidelines regarding the
17 limitation on total credits allowable under this section and Section
18 23623 and guidelines necessary to avoid the application of
19 paragraph (2) of subdivision (f) through split-ups, shell
20 corporations, partnerships, tiered ownership structures, or
21 otherwise.

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

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

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

33 ~~23623. (a) For each taxable year beginning on or after January~~
34 ~~1, 2009, there shall be allowed as a credit against the "tax," as~~
35 ~~defined in Section 23036, three thousand dollars (\$3,000) for each~~
36 ~~net increase in qualified full-time employees, as specified in~~
37 ~~subdivision (c), hired during the taxable year by a qualified~~
38 ~~employer.~~

39 ~~(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:~~

4 ~~(A) A qualified employee who was paid qualified wages during~~
5 ~~the taxable year by the qualified employer for services of not less~~
6 ~~than an average of 35 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) “Qualified employer” means a taxpayer that, as of the last~~
31 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
32 ~~employees.~~

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

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

37 ~~(A) In the case of a full-time employee paid hourly qualified~~
38 ~~wages, “annual full-time equivalent” means the total number of~~
39 ~~hours worked for the taxpayer by the employee (not to exceed~~
40 ~~2,000 hours per employee) divided by 2,000.~~

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

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

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

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

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

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

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

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

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

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

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

35 ~~(g) (1) (A) Credit under this section and Section 17053.80 shall~~
36 ~~be allowed only for credits claimed on timely filed original returns~~
37 ~~received by the Franchise Tax Board on or before the cut-off date~~
38 ~~established by the Franchise Tax Board.~~

39 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~
40 ~~last day of the calendar quarter within which the Franchise Tax~~

1 Board estimates it will have received timely filed original returns
2 claiming credits under this section and Section 17053.80 that
3 cumulatively total four hundred million dollars (\$400,000,000)
4 for all taxable years.

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

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

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

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

21 (h) (1) The Franchise Tax Board may prescribe rules, guidelines
22 or procedures necessary or appropriate to carry out the purposes
23 of this section, including any guidelines regarding the limitation
24 on total credits allowable under this section and Section 17053.80
25 and guidelines necessary to avoid the application of paragraph (2)
26 of subdivision (f) through split-ups, shell corporations, partnerships,
27 tiered ownership structures, or 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 date, and as of that
35 December 1 is repealed.

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

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”~~ (A) *For taxable years beginning on or after*
36 *January 1, 2009, and before January 1, 2012, “qualified employer”*
37 *means a taxpayer that, as of the last day of the preceding taxable*
38 *year, employed a total of 20 or fewer employees.*

39 (B) *For taxable years beginning on or after January 1, 2012,*
40 *“qualified employer” means a taxpayer that, as of the last day of*

1 *the preceding taxable year, employed a total of 50 or fewer*
2 *employees.*

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

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

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

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

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

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

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

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

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

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

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

37 (f) For purposes of this section:

38 (1) All employees of the trades or businesses that are treated as
39 related under either Section 267, 318, or 707 of the Internal
40 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) (g) of Section—17276 24416.20, without application of paragraph (7) of that subdivision, shall apply.

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

(B) For purposes of this paragraph, the cut-off 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 17053.80 that cumulatively total four hundred million dollars (\$400,000,000) for all taxable years.

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

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

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

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

(h) (1) The Franchise Tax Board may prescribe rules, ~~guidelines~~ *guidelines*, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the limitation on total credits allowable under this section and Section 17053.80 and guidelines necessary to avoid the application of paragraph (2) of subdivision (f) through split-ups, shell corporations, partnerships, 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

1 any standard, criterion, procedure, determination, rule, notice, or
2 guideline established or issued by the Franchise Tax Board
3 pursuant to this section.

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

7 SEC. 5. (a) On or before January 1, 2015, the Franchise Tax
8 Board shall report to the Legislature the number of employers that
9 were allowed a credit and the amount of credits utilized and carried
10 over for taxable years beginning on or after January 1, 2012, and
11 before January 1, 2014, pursuant to Sections 17053.80 and 23623
12 of the Revenue and Taxation Code. To the extent possible, the
13 Franchise Tax Board shall also report the average number of
14 employees that were hired by taxpayers that claimed the credit,
15 and aggregate data and compare whether there were more
16 employers claiming the credit year to year.

17 (b) It is the intent of the Legislature to compare this data with
18 general economic trends to determine if the credit allowed under
19 Sections 17053.80 and 23623 of the Revenue and Taxation Code
20 increased employment overall in the state and specifically for small
21 businesses.

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

25 (d) Pursuant to Section 10231.5 of the Government Code, this
26 section is repealed on January 1, 2019.

27 SEC. 6. This act provides for a tax levy within the meaning of
28 Article IV of the Constitution and shall go into immediate effect.