

ASSEMBLY BILL

No. 2037

Introduced by Assembly Members Davis and V. Manuel Pérez
(Principal coauthors: Assembly Members Furutani, Gatto, and
Solorio)
(Principal coauthor: Senator Price)

February 23, 2012

An act to add and repeal Sections 17053.9 and 23622.9 of, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2037, as introduced, Davis. Income taxes: hiring credits: investment credits.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit in the amount of \$3,000 for each full-time employee hired by a qualified employer applicable to taxable years beginning on or after January 1, 2009, and ending upon a cut-off date calculated based upon an estimate by the Franchise Tax Board of claims cumulatively totaling \$400,000,000 for all taxable years, as specified. Existing law also creates the California Tax Credit Allocation Committee, which has specified duties in regard to low-income housing credits.

This bill would instead calculate the cut-off date for the above-described hiring credit based upon an estimate by the Franchise Tax Board of claims cumulatively totaling \$100,000,000 for all taxable years, as specified.

This bill would also allow a credit under both laws, for taxable years beginning on or after January 1, 2013, and before January 1, 2020, in a specified amount for investments in low-income communities. The bill would limit the total amount of credit allowed pursuant to these provisions to \$50,000,000 per year. This bill would impose specified duties on the California Tax Credit Allocation Committee with regard to the application for, and allocation of, the credit. The bill would require the committee to establish and impose reasonable fees upon entities that apply for the allocation of the credit and use the revenue to defray the cost of administering the program, as specified, thereby making an appropriation. This bill would also appropriate \$150,000 from the Tax Credit Allocation Fee Account to the committee for purposes of implementing the tax credit.

This bill would result in a change in state taxes for the purpose of increasing state revenues 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: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California is entering the sixth year of the worst economic
- 4 recession since the Great Depression.
- 5 (b) Due to a systemic budget problem, the state is suffering from
- 6 chronic revenue shortfalls based in part on increasing reliance on
- 7 revenues from personal income tax rolls.
- 8 (c) Investment in small business ventures is a proven method
- 9 of stimulating economic activity, creating new jobs, and generating
- 10 revenue by expanding the tax base.
- 11 (d) The federal New Markets Credit Tax Program, created in
- 12 2000 with bipartisan support, has been an effective means of
- 13 stimulating state and regional economies due to its provision
- 14 allowing the creation of matching state programs to leverage
- 15 additional federal funds for investment capital benefitting local
- 16 communities. These investments accrue to small businesses,
- 17 schools, and other business-related real estate projects.

1 (e) As of 2010, nine states, Ohio, Florida, Missouri, Louisiana,
2 Mississippi, Kentucky, Illinois, Oklahoma, and Connecticut, had
3 enacted matching state programs. On average, these states
4 successfully leveraged \$13 in federal new Markets Tax Credit for
5 every dollar of state credits initially allocated for the state program.

6 (f) In the 2010–11 fiscal year, \$350 million of California’s State
7 Hiring Tax Credit credits went unused.

8 (g) Given the current economic climate and the lack of use of
9 the state hiring tax credit, it is reasonable for the Legislature to
10 search for and consider other alternatives to stimulate hiring and
11 generate economic activity with a view to shortening the current
12 recession and promoting permanent economic recovery.

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

16 ~~17053.80. (a) For each taxable year beginning on or after~~
17 ~~January 1, 2009, there shall be allowed as a credit against the “net~~
18 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~
19 ~~for each net increase in qualified full-time employees, as specified~~
20 ~~in subdivision (c), hired during the taxable year by a qualified~~
21 ~~employer.~~

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

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

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

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

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

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

35 ~~(A) An employee certified as a qualified employee in an~~
36 ~~enterprise zone designated in accordance with Chapter 12.8~~
37 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
38 ~~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.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(4) The Franchise Tax Board shall periodically provide notice on its Web site with respect to the amount of credit under this section and Section 23623 claimed on timely filed original returns 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. 3. 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 *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 employer” means a taxpayer that, as of the last
21 day of the preceding taxable year, employed a total of 20 or fewer
22 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 taxable year.

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

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

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

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

17 (f) For purposes of this section:

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

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

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

29 (B) For purposes of this paragraph, the cut-off date shall be the
30 last day of the calendar quarter within which the Franchise Tax
31 Board estimates it will have received timely filed original returns
32 claiming credits under this section and Section 23623 that
33 cumulatively total ~~four~~ one hundred million dollars (~~\$400,000,000~~)
34 (\$100,000,000) for all taxable years.

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

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

1 not be reviewed in any administrative or judicial ~~proceeding~~
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 *Internet* Web site with respect to the amount of credit under
11 this section and Section 23623 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 23623 and guidelines necessary to avoid the application of
18 paragraph (2) of subdivision (f) through split-ups, 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 date, and as of that
28 December 1 is repealed.

29 SEC. 4. Section 17053.9 is added to the Revenue and Taxation
30 Code, to read:

31 17053.9. There is hereby created the California New Markets
32 Tax Credit Program as provided in this section and Section
33 23622.9. The purpose of this program is to stimulate economic
34 development, and hasten California's economic recovery, by
35 granting tax credits for investment in California, including, but
36 not limited to, retail businesses, real property, financial institutions,
37 and schools. The California Tax Credit Allocation Committee shall
38 have responsibility for the administration of this program as
39 provided in this section and Section 23622.9. The program shall
40 be as follows:

1 (a) (1) For taxable years beginning on or after January 1, 2013,
2 and before January 1, 2020, there shall be allowed to a taxpayer
3 that holds a qualified equity investment on a credit allowance date
4 of the investment which occurs during the taxable year, as a credit
5 against the “net tax,” as defined in Section 17039, an amount equal
6 to the applicable percentage described in paragraph (2).

7 (2) For purposes of paragraph (1), the applicable percentage
8 shall be 39 percent of the qualified equity investment.

9 (b) For purposes of this section:

10 (1) “Credit allowance date” means, with respect to any qualified
11 equity investment, the date on which the investment is initially
12 made.

13 (2) “Equity investment” means either of the following:

14 (A) Any stock, other than nonqualified preferred stock as defined
15 in Section 351(g)(2) of the Internal Revenue Code, in an entity
16 which is a corporation.

17 (B) Any capital interest in an entity which is a partnership.

18 (3) (A) “Low-income community” means a population census
19 tract where any of the following applies:

20 (i) The tract has a poverty rate of at least 20 percent.

21 (ii) The tract is not located within a metropolitan area, and the
22 median family income does not exceed 80 percent of the statewide
23 median family income.

24 (iii) The tract is located within a metropolitan area, and the
25 median family income does not exceed 80 percent of the greater
26 statewide median family income or the metropolitan area median
27 family income.

28 (iv) The tract is located within a high migration rural county,
29 and the median income does not exceed 85 percent of the statewide
30 median family income. For purposes of this clause, “high migration
31 rural county” means a county which, during the 20-year period
32 ending with the year in which the most recent census was
33 conducted, has a net out migration of inhabitants from the county
34 of at least 10 percent of the population of the county at the
35 beginning of that period.

36 (B) Where a community is in a location that is not tracted for
37 population census tracts, the equivalent county divisions shall be
38 used for purposes of determining poverty rates and median family
39 income.

1 (C) Where a community is in a population census tract with a
2 population of less than 2,000, the community shall be treated as a
3 low-income community if the tract is within an empowerment
4 zone designated under Section 1391 of the Internal Revenue Code
5 and is contiguous to one or more low-income communities, as
6 determined under this paragraph.

7 (D) When the United States Census Bureau discontinues using
8 the decennial census to report median family income on a census
9 tract basis, census block group data shall be used based on the
10 American Community Survey.

11 (4) (A) “Qualified active low-income community business”
12 means, with respect to any taxable year, a corporation, including
13 a nonprofit corporation, or partnership that, for that taxable year,
14 meets all of the following conditions:

15 (i) Derives at least 50 percent of its total gross income from the
16 active conduct of a qualified business in a low-income community
17 in California.

18 (ii) A substantial portion of the use of the tangible property of
19 the entity, whether owned or leased, is within a low-income
20 community in California. “Substantial portion” shall be defined
21 as 40 percent or more of the tangible property of the entity.

22 (iii) Less than 5 percent of the average of the aggregate
23 unadjusted base of the property of the entity is attributable to
24 collectibles, as defined in Section 408(m)(2) of the Internal
25 Revenue Code.

26 (iv) Less than 5 percent of the average of the aggregate
27 unadjusted base of the property of the entity is attributable to
28 nonqualified financial property, as defined in Section 1397C(e) of
29 the Internal Revenue Code.

30 (B) A “qualified active low-income community business” shall
31 include a business carried on by an individual as a proprietor, if
32 that business meets the requirements of subparagraph (A) were it
33 incorporated or a trade or business that would qualify if that trade
34 or business were separately incorporated.

35 (C) A “qualified active low-income community business” shall
36 include startup businesses.

37 (5) “Qualified business” has the same meaning as that in Section
38 1397C(d) of the Internal Revenue Code except that:

39 (A) In lieu of applying subparagraph (B) of paragraph (2), the
40 rental to others of real property located in any low-income

1 community shall be treated as a qualified business if there are
2 substantial improvements located on that real property.

3 (B) Paragraph (3) of that section shall not apply.

4 (6) (A) “Qualified community development entity” means a
5 domestic corporation or partnership that meets all of the following
6 conditions:

7 (i) Has a primary mission of serving, or providing investment
8 capital for, low-income communities or low-income persons.

9 (ii) Maintains accountability to residents of low-income
10 communities through their representation on any governing board
11 of the entity or on any advisory board to the entity.

12 (iii) Is certified by the California Tax Credit Allocation
13 Committee for purposes of this section as being a qualified
14 community development entity.

15 (B) A domestic corporation or partnership shall be deemed a
16 “qualified community development entity” if it has entered into
17 an allocation agreement with the Community Development
18 Financial Institutions Fund of the United States Department of the
19 Treasury with respect to credits authorized by Section 45D of the
20 Internal Revenue Code of 1986, as amended, and if the allocation
21 agreement includes the state within its service area.

22 (7) (A) “Qualified equity investment” means any equity
23 investment in a qualified community development entity if all of
24 the following conditions are met:

25 (i) The investment is acquired by the taxpayer at its original
26 issue, directly or through an underwriter, solely in exchange for
27 cash.

28 (ii) Substantially all of the cash is used by the qualified
29 community development entity to make low-income community
30 investments. This requirement shall be deemed met if at least 85
31 percent of the aggregate gross assets of the qualified community
32 development entity are invested in qualified low-income
33 community investments in California.

34 (iii) The investment is designated for purposes of this section
35 by the qualified community development entity.

36 (B) “Qualified equity investment” does not include any equity
37 investment issued by a qualified community development entity
38 more than one year after the date that the entity receives an
39 allocation under subdivision (d).

1 (C) A “qualified equity investment” shall include any equity
2 investment which would, notwithstanding clause (i) of
3 subparagraph (A), be a qualified equity investment in the hands
4 of the taxpayer if the investment was a qualified equity investment
5 in the hands of a prior holder.

6 (D) Section 1202(c)(3) of the Internal Revenue Code, relating
7 to purchases by a corporation of its own stock, shall apply.

8 (8) “Qualified low-income community investment” means any
9 of the following:

10 (A) Any capital or equity investment in, or loan to, a qualified
11 low-income community business.

12 (B) Any capital or equity investment in, or loan to, a real estate
13 project in a low-income community.

14 (C) The purchase from another qualified community
15 development entity of any loan made by that entity which is a
16 qualified low-income community investment.

17 (D) Financial counseling and other services in support of
18 business activities to businesses located in, and residents of,
19 low-income communities.

20 (E) Any equity investment in, or loan to, a qualified community
21 development entity.

22 (c) (1) The California Tax Credit Allocation Committee shall
23 adopt guidelines necessary or appropriate to carry out the purposes
24 of this section. The adoption of the guidelines shall not be subject
25 to the rulemaking provisions of the Administrative Procedure Act
26 of Chapter 3.5 (commencing with Section 11340) of Part 1 of
27 Division 3 of Title 2 of the Government Code.

28 (2) The committee shall establish and impose reasonable fees
29 upon entities that apply for the allocation pursuant to subdivision
30 (d) and use the revenue to defray the cost of administering the
31 program. The committee shall establish the fees in a manner that
32 ensures that (A) the total amount collected equals the amount
33 reasonably necessary to defray the commission’s costs in
34 performing its administrative duties under this section, and (B) the
35 amount paid by each entity reasonably corresponds with the value
36 of the services provided to the entity.

37 (3) In developing guidelines the committee shall adopt an
38 allocation process that does all of the following:

1 (A) Creates an equitable distribution process that ensures that
2 low-income communities across the state have an opportunity to
3 benefit from the program.

4 (B) Sets minimum organizational capacity standards that
5 applicants must meet in order to receive an allocation of credits.

6 (C) Requires annual reporting by each community development
7 organization that receives an allocation. The report shall include,
8 but is not limited to, the impact the credit had on the low-income
9 community, the amount of moneys used, and the types of activities
10 funded through the equity investment. The reporting period shall
11 be for a period of eight years following the allocation of credits.

12 (D) Provides for an annual return of unused credits so that they
13 may be reallocated to other community development entities.

14 (4) The committee shall annually report on its Internet Web site
15 the information provided by low-income community development
16 entities and on the geographic distribution of the credits.

17 (d) (1) The aggregate amount of credit that may be allowed in
18 any calendar year pursuant to this section and Section 23622.9
19 shall be an amount equal to the sum of the following:

20 (A) Fifty million dollars (\$50,000,000) in credits for the 2012
21 calendar year and each calendar year thereafter, through and
22 including the 2019 calendar year.

23 (B) The unused credit amount, if any, for the preceding calendar
24 year.

25 (2) The aggregate amount of credit specified under paragraph
26 (1) shall be allocated by the California Tax Credit Allocation
27 Committee among entities that apply for the allocation. The
28 California Tax Credit Allocation Committee shall give priority to
29 applications that either are submitted by an entity that has a record
30 of successfully providing capital or technical assistance to
31 disadvantaged businesses or communities or entities that intend
32 to make qualified low-income community investments in one or
33 more businesses in which persons unrelated to the entity hold the
34 majority equity interest.

35 (e) Any credits used under subdivision (a) for a qualified equity
36 investment where a recapture event occurs at any time before the
37 close of the seventh taxable year after the qualified equity
38 investment shall be included in the income in the taxable year in
39 which the recapture event occurred. For purposes of this
40 subdivision, a “recapture event” shall include any of the following

1 that occur any time before the close of the seventh taxable year
2 after the qualified equity investment in a qualified community
3 development entity:

4 (1) The qualified community development entity ceases to be
5 a qualified community development entity.

6 (2) The proceeds of the investment cease to be used as required
7 under clause (ii) of subparagraph (A) of paragraph (7) of
8 subdivision (b).

9 (3) The investment is redeemed by a qualified community
10 development entity.

11 (f) An exception to the provisions of clause (ii) of subparagraph
12 (A) of paragraph (7) of subdivision (b) shall exist wherein an
13 investment shall be considered held by a community development
14 entity even if the investment has been sold or repaid, provided that
15 the community development entity reinvests an amount equal to
16 the capital returned to or recovered by the community development
17 entity from the original investment, exclusive of any profits
18 realized, in another qualified low-income community investment
19 within 12 months of the receipt of that capital. A community
20 development entity shall not be required to reinvest capital returned
21 from qualified low-income community investments after the sixth
22 anniversary of the issuance of the qualified equity investment, the
23 proceeds of which were used to make the qualified low-income
24 community investment, and the qualified low-income community
25 investment shall be considered held by the community development
26 entity through the seventh anniversary of the qualified equity
27 investment's issuance.

28 (g) This section shall remain in effect only until December 1,
29 2020, and as of that date is repealed.

30 SEC. 5. Section 23622.9 is added to the Revenue and Taxation
31 Code, to read:

32 23622.9. There is hereby created the California New Markets
33 Tax Credit Program as provided in this section and Section
34 17053.9. The purpose of this program is to stimulate economic
35 development, and hasten California's economic recovery, by
36 granting tax credits for investment in California, including, but
37 not limited to, retail businesses, real property, financial institutions,
38 and schools. The California Tax Credit Allocation Committee shall
39 have responsibility for the administration of this program as

1 provided in this section and Section 17053.9. The program shall
2 be as follows:

3 (a) (1) For taxable years beginning on or after January 1, 2013,
4 and before January 1, 2020, there shall be allowed to a taxpayer
5 that holds a qualified equity investment on a credit allowance date
6 of the investment which occurs during the taxable year, as a credit
7 against the “tax,” as defined in Section 23036, an amount equal
8 to the applicable percentage described in paragraph (2).

9 (2) For purposes of paragraph (1), the applicable percentage
10 shall be 39 percent of the qualified equity investment.

11 (b) For purposes of this section:

12 (1) “Credit allowance date” means, with respect to any qualified
13 equity investment, the date on which the investment is initially
14 made.

15 (2) “Equity investment” means either of the following:

16 (A) Any stock, other than nonqualified preferred stock as defined
17 in Section 351(g)(2) of the Internal Revenue Code, in an entity
18 which is a corporation.

19 (B) Any capital interest in an entity which is a partnership.

20 (3) (A) “Low-income community” means a population census
21 tract where any of the following applies:

22 (i) The tract has a poverty rate of at least 20 percent.

23 (ii) The tract is not located within a metropolitan area, and the
24 median family income does not exceed 80 percent of the statewide
25 median family income.

26 (iii) The tract is located within a metropolitan area, and the
27 median family income does not exceed 80 percent of the greater
28 statewide median family income or the metropolitan area median
29 family income.

30 (iv) The tract is located within a high migration rural county
31 and the median income does not exceed 85 percent of the statewide
32 median family income. For purposes of this clause, “high migration
33 rural county” means a county which, during the 20-year period
34 ending with the year in which the most recent census was
35 conducted, has a net out migration of inhabitants from the county
36 of at least 10 percent of the population of the county at the
37 beginning of that period.

38 (B) Where a community is in a location that is not tracted for
39 population census tracts, the equivalent county divisions shall be

1 used for purposes of determining poverty rates and median family
2 income.

3 (C) Where a community is in a population census tract with a
4 population of less than 2,000, the community shall be treated as a
5 low-income community if the tract is within an empowerment
6 zone designated under Section 1391 of the Internal Revenue Code
7 and is contiguous to one or more low-income communities, as
8 determined under this paragraph.

9 (D) When the United States Census Bureau discontinues using
10 the decennial census to report median family income on a census
11 tract basis, census block group data shall be used based on the
12 American Community Survey.

13 (4) (A) “Qualified active low-income community business”
14 means, with respect to any taxable year, a corporation, including
15 a nonprofit corporation, or partnership that, for that taxable year,
16 meets all of the following conditions:

17 (i) Derives at least 50 percent of its total gross income from the
18 active conduct of a qualified business in a low-income community
19 in California.

20 (ii) A substantial portion of the use of the tangible property of
21 the entity, whether owned or leased, is within a low-income
22 community in California. “Substantial portion” shall be defined
23 as 40 percent or more of the tangible property of the entity.

24 (iii) Less than 5 percent of the average of the aggregate
25 unadjusted base of the property of the entity is attributable to
26 collectibles, as defined in Section 408(m)(2) of the Internal
27 Revenue Code.

28 (iv) Less than 5 percent of the average of the aggregate
29 unadjusted base of the property of the entity is attributable to
30 nonqualified financial property, as defined in Section 1397C(e) of
31 the Internal Revenue Code.

32 (B) A “qualified active low-income community business” shall
33 include a business carried on by an individual as a proprietor, if
34 that business meets the requirements of subparagraph (A) were it
35 incorporated or a trade or business that would qualify if that trade
36 or business were separately incorporated.

37 (C) A “qualified active low-income community business” shall
38 include startup businesses.

39 (5) “Qualified business” has the same meaning as that in Section
40 1397C(d) of the Internal Revenue Code except that:

(A) In lieu of applying subparagraph (B) of paragraph (2), the rental to others of real property located in any low-income community shall be treated as a qualified business if there are substantial improvements located on that real property.

(B) Paragraph (3) of that section shall not apply.

(6) (A) “Qualified community development entity” means a domestic corporation or partnership that meets all of the following conditions:

(i) Has a primary mission of serving, or providing investment capital for, low-income communities or low-income persons.

(ii) Maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity.

(iii) Is certified by the California Tax Credit Allocation Committee for purposes of this section as being a qualified community development entity.

(B) A domestic corporation or partnership shall be deemed a “qualified community development entity” if it has entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Department of the Treasury with respect to credits authorized by Section 45D of the Internal Revenue Code of 1986, as amended, and if the allocation agreement includes the state within its service area.

(7) (A) “Qualified equity investment” means any equity investment in a qualified community development entity if all of the following conditions are met:

(i) The investment is acquired by the taxpayer at its original issue, directly or through an underwriter, solely in exchange for cash.

(ii) Substantially all of the cash is used by the qualified community development entity to make low-income community investments. This requirement shall be deemed met if at least 85 percent of the aggregate gross assets of the qualified community development entity are invested in qualified low-income community investments in California.

(iii) The investment is designated for purposes of this section by the qualified community development entity.

(B) “Qualified equity investment” does not include any equity investment issued by a qualified community development entity

1 more than one year after the date that the entity receives an
2 allocation under subdivision (d).

3 (C) A “qualified equity investment” shall include any equity
4 investment which would, notwithstanding clause (i) of
5 subparagraph (A), be a qualified equity investment in the hands
6 of the taxpayer if the investment was a qualified equity investment
7 in the hands of a prior holder.

8 (D) Section 1202(c)(3) of the Internal Revenue Code, relating
9 to purchases by a corporation of its own stock, shall apply.

10 (8) “Qualified low-income community investment” means any
11 of the following:

12 (A) Any capital or equity investment in, or loan to, a qualified
13 low-income community business.

14 (B) Any capital or equity investment in, or loan to, a real estate
15 project in a low-income community.

16 (C) The purchase from another qualified community
17 development entity of any loan made by that entity which is a
18 qualified low-income community investment.

19 (D) Financial counseling and other services in support of
20 business activities to businesses located in, and residents of,
21 low-income communities.

22 (E) Any equity investment in, or loan to, a qualified community
23 development entity.

24 (c) (1) The California Tax Credit Allocation Committee shall
25 adopt guidelines necessary or appropriate to carry out the purposes
26 of this section. The adoption of the guidelines shall not be subject
27 to the rulemaking provisions of the Administrative Procedure Act
28 of Chapter 3.5 (commencing with Section 11340) of Part 1 of
29 Division 3 of Title 2 of the Government Code.

30 (2) The committee shall establish and impose reasonable fees
31 upon entities that apply for the allocation pursuant to subdivision
32 (d) and use the revenue to defray the cost of administering the
33 program. The committee shall establish the fees in a manner that
34 ensures that (A) the total amount collected equals the amount
35 reasonably necessary to defray the commission’s costs in
36 performing its administrative duties under this section, and (B) the
37 amount paid by each entity reasonably corresponds with the value
38 of the services provided to the entity.

39 (3) In developing guidelines the committee shall adopt an
40 allocation process that does all of the following:

1 (A) Creates an equitable distribution process that ensures that
2 low-income communities across the state have an opportunity to
3 benefit from the program.

4 (B) Sets minimum organizational capacity standards that
5 applicants must meet in order to receive an allocation of credits.

6 (C) Requires annual reporting by each community development
7 organization that receives an allocation. The report shall include,
8 but is not limited to, the impact the credit had on the low-income
9 community, the amount of moneys used, and the types of activities
10 funded through the equity investment. The reporting period shall
11 be for a period of eight years following the allocation of credits.

12 (D) Provides for an annual return of unused credits so that they
13 may be reallocated to other community development entities.

14 (4) The committee shall annually report on its Internet Web site
15 the information provided by low-income community development
16 entities and on the geographic distribution of the credits.

17 (d) (1) The aggregate amount of credit that may be allowed in
18 any calendar year pursuant to this section and Section 17053.9
19 shall be an amount equal to the sum of the following:

20 (A) Fifty million dollars (\$50,000,000) in credits for the 2012
21 calendar year and each calendar year thereafter, through and
22 including the 2019 calendar year.

23 (B) The unused credit amount, if any, for the preceding calendar
24 year.

25 (2) The aggregate amount of credit specified under paragraph
26 (1) shall be allocated by the California Tax Credit Allocation
27 Committee among entities that apply for the allocation. The
28 California Tax Credit Allocation Committee shall give priority to
29 applications that either are submitted by an entity that has a record
30 of successfully providing capital or technical assistance to
31 disadvantaged businesses or communities or entities that intend
32 to make qualified low-income community investments in one or
33 more businesses in which persons unrelated to the entity hold the
34 majority equity interest.

35 (e) Any credits used under subdivision (a) for a qualified equity
36 investment where a recapture event occurs at any time before the
37 close of the seventh taxable year after the qualified equity
38 investment shall be included in the income in the taxable year in
39 which the recapture event occurred. For purposes of this
40 subdivision, a “recapture event” shall include any of the following

1 that occur any time before the close of the seventh taxable year
2 after the qualified equity investment in a qualified community
3 development entity:

4 (1) The qualified community development entity ceases to be
5 a qualified community development entity.

6 (2) The proceeds of the investment cease to be used as required
7 under clause (ii) of subparagraph (A) of paragraph (7) of
8 subdivision (b).

9 (3) The investment is redeemed by a qualified community
10 development entity.

11 (f) An exception to the provisions of clause (ii) of subparagraph
12 (A) of paragraph (7) of subdivision (b) shall exist wherein an
13 investment shall be considered held by a community development
14 entity even if the investment has been sold or repaid, provided that
15 the community development entity reinvests an amount equal to
16 the capital returned to or recovered by the community development
17 entity from the original investment, exclusive of any profits
18 realized, in another qualified low-income community investment
19 within 12 months of the receipt of that capital. A community
20 development entity shall not be required to reinvest capital returned
21 from qualified low-income community investments after the sixth
22 anniversary of the issuance of the qualified equity investment, the
23 proceeds of which were used to make the qualified low-income
24 community investment, and the qualified low-income community
25 investment shall be considered held by the community development
26 entity through the seventh anniversary of the qualified equity
27 investment's issuance.

28 (g) This section shall remain in effect only until December 1,
29 2020, and as of that date is repealed.

30 SEC. 6. 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~~

~~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 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 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 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. 7. 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 each taxable year beginning on or after January 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) (g) of Section—17276 24416.20, without
39 application of 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~~ one hundred million dollars (~~\$400,000,000~~)
10 (\$100,000,000) 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 *Internet* Web site with respect to the amount of credit under
25 this section and Section 17053.80 claimed on timely filed original
26 returns received by the Franchise Tax Board.

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

35 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
36 Division 3 of Title 2 of the Government Code does not apply to
37 any standard, criterion, procedure, determination, rule, notice, or
38 guideline established or issued by the Franchise Tax Board
39 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. 8. Notwithstanding Section 50199.9 of the Health and Safety Code, or any other law, the sum of one hundred fifty thousand dollars (\$150,000) is hereby appropriated from the Tax Credit Allocation Fee Account to the California Tax Credit Allocation Committee for purposes of implementing the California New Markets Tax Credit Program as provided in Sections 17053.9 and 23622.9 of the Revenue and Taxation Code. The appropriated funds shall remain in the Tax Credit Allocation Fee Account until such time as the funds are required for purposes of implementing this new program, and shall only be available for expenditure until January 1, 2020. It is the intent of the Legislature that these appropriated funds shall be reimbursed by the application fees collected by the committee for this new program.

SEC. 9. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.