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 ⅔ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: ⅔. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) California is entering the sixth year of the worst economic recession since the Great Depression.

(b) Due to a systemic budget problem, the state is suffering from chronic revenue shortfalls based in part on increasing reliance on revenues from personal income tax rolls.

(c) Investment in small business ventures is a proven method of stimulating economic activity, creating new jobs, and generating revenue by expanding the tax base.

(d) The federal New Markets Credit Tax Program, created in 2000 with bipartisan support, has been an effective means of stimulating state and regional economies due to its provision allowing the creation of matching state programs to leverage additional federal funds for investment capital benefitting local communities. These investments accrue to small businesses, schools, and other business-related real estate projects.

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

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

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

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and Taxation Code, as added by Section 3 of Chapter 10 of the Third Extraordinary Session of the Statutes of 2009, is repealed.

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

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

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

~~(2) "Qualified full-time employee" means:~~

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

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

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

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

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

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

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

~~(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.~~

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

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

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

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

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

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

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

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

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

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

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

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

(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.

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

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

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

(f) For purposes of this section:

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

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

(g) (1) (A) Credit under this section and Section 23623 shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the cut-off 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 23623 that cumulatively total ~~four~~ *one* hundred million dollars ~~($400,000,000)~~ *($100,000,000)* 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~~ *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 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. 4. Section 17053.9 is added to the Revenue and Taxation Code, to read:

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

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

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

(b) For purposes of this section:

(1) "Credit allowance date" means, with respect to any qualified equity investment, the date on which the investment is initially made.

(2) "Equity investment" means either of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) A "qualified active low-income community business" shall include startup businesses.

(5) "Qualified business" has the same meaning as that in Section 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 more than one year after the date that the entity receives an allocation under subdivision (d).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Any credits used under subdivision (a) for a qualified equity investment where a recapture event occurs at any time before the close of the seventh taxable year after the qualified equity investment shall be included in the income in the taxable year in which the recapture event occurred. For purposes of this subdivision, a "recapture event" shall include any of the following that occur any time before the close of the seventh taxable year after the qualified equity investment in a qualified community development entity:

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

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

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

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

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

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

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

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

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

(b) For purposes of this section:

(1) "Credit allowance date" means, with respect to any qualified equity investment, the date on which the investment is initially made.

(2) "Equity investment" means either of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) A "qualified active low-income community business" shall include startup businesses.

(5) "Qualified business" has the same meaning as that in Section 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 more than one year after the date that the entity receives an allocation under subdivision (d).

(C) A "qualified equity investment" shall include any equity investment which would, notwithstanding clause (i) of subparagraph (A), be a qualified equity investment in the hands of the taxpayer if the investment was a qualified equity investment in the hands of a prior holder.

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

(8) "Qualified low-income community investment" means any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Any credits used under subdivision (a) for a qualified equity investment where a recapture event occurs at any time before the close of the seventh taxable year after the qualified equity investment shall be included in the income in the taxable year in which the recapture event occurred. For purposes of this subdivision, a "recapture event" shall include any of the following that occur any time before the close of the seventh taxable year after the qualified equity investment in a qualified community development entity:

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

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

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

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

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

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

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

~~(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.~~

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

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

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

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

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

~~(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.~~

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

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

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

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

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

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

~~(g) (1) (A) Credit under this section and Section 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 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 defined in Section 23036, three thousand dollars ($3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.

(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.

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

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

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

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

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

(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.

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

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

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

(f) For purposes of this section:

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

(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision ~~(f)~~ *(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~~ *one* hundred million dollars ~~($400,000,000)~~ *($100,000,000)* 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 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. 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.

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