

AMENDED IN ASSEMBLY MAY 3, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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 amended, 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~~ *ability to leverage*
- 15 ~~additional federal funds for investment capital benefitting local~~
- 16 ~~communities to drive private investment in communities that would~~
- 17 *otherwise not have had access to capital.* These investments accrue

1 to small businesses, schools, and other business-related real estate
2 projects.

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

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

10 (g) Given the current economic climate and the lack of use of
11 the state hiring tax credit, it is reasonable for the Legislature to
12 search for and consider other alternatives to stimulate hiring and
13 generate economic activity with a view to shortening the current
14 recession and promoting permanent economic recovery *through*
15 *the creation of a New Markets Tax Credit Program.*

16 (h) *There are low-income communities in the state that face*
17 *multiple challenges in attracting private investment, including,*
18 *but not limited to, developing and maintaining a workforce that*
19 *meets the skill needs of local employers, an infrastructure that*
20 *connects local businesses to external markets, and neighborhoods*
21 *that are not disproportionately burdened with environmental*
22 *pollutants, including air, soil, and water contamination.*

23 (i) *Given the ability of the New Markets Tax Credit Program*
24 *to stimulate private investment activity in areas that would*
25 *otherwise not have access to investment capital, it is appropriate*
26 *that the state consider prioritizing a portion of the California New*
27 *Markets Tax Credit Program to encourage private investment in*
28 *areas that face multiple challenges in attracting investment capital.*

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31 Session of the Statutes of 2009, is repealed.

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

35 17053.80. (a) For each taxable year beginning on or after
36 January 1, 2009, there shall be allowed as a credit against the “net
37 tax,” as defined in Section 17039, three thousand dollars (\$3,000)
38 for each net increase in qualified full-time employees, as specified
39 in subdivision (c), hired during the taxable year by a qualified
40 employer.

1 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (A) In the case of a full-time employee paid hourly qualified
39 wages, “annual full-time equivalent” means the total number of

1 hours worked for the taxpayer by the employee (not to exceed
2 2,000 hours per employee) divided by 2,000.

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

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

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

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

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

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

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

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

29 (f) For purposes of this section:

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

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

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

(B) For purposes of this paragraph, the cutoff date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 23623 that cumulatively total one hundred million dollars (\$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 cutoff 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 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 splitups, 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 cutoff 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

1 rural county” means a county which, during the 20-year period
2 ending with the year in which the most recent census was
3 conducted, has a net out migration of inhabitants from the county
4 of at least 10 percent of the population of the county at the
5 beginning of that period.

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

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

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

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

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

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

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

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

39 (B) A “qualified active low-income community business” shall
40 include a business carried on by an individual as a proprietor, if

1 that business meets the requirements of subparagraph (A) were it
2 incorporated or a trade or business that would qualify if that trade
3 or business were separately incorporated.

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

6 (5) “Qualified business” has the same meaning as that in Section
7 1397C(d) of the Internal Revenue Code except that:

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

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

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

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

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

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

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

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

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

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

1 development entity are invested in qualified low-income
2 community investments in California.

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

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

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

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

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

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

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

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

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

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

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

36 (2) The committee shall establish and impose reasonable fees
37 upon entities that apply for the allocation pursuant to subdivision
38 (d) and use the revenue to defray the cost of administering the
39 program. The committee shall establish the fees in a manner that
40 ensures that (A) the total amount collected equals the amount

1 reasonably necessary to defray the commission's costs in
2 performing its administrative duties under this section, and (B) the
3 amount paid by each entity reasonably corresponds with the value
4 of the services provided to the entity.

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

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

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

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

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

20 (E) *Requires the committee to annually reserve the following:*

21 (i) *At least 15 percent of the tax credits for community*
22 *development entities that target businesses located in low-income*
23 *communities facing disproportionate environmental pollution.*

24 (ii) *At least 15 percent of the tax credits for community*
25 *development entities that target rural areas, including businesses*
26 *providing equipment or supplies to agricultural producers, packers,*
27 *handlers, and processors.*

28 (iii) *At least 20 percent of the tax credits for community*
29 *development entities that target businesses in inner-city areas.*

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

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

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

39 (B) The unused credit amount, if any, for the preceding calendar
40 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

1 investment shall be considered held by the community development
2 entity through the seventh anniversary of the qualified equity
3 investment's issuance.

4 (g) This section shall remain in effect only until December 1,
5 2020, and as of that date is repealed.

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

8 23622.9. There is hereby created the California New Markets
9 Tax Credit Program as provided in this section and Section
10 17053.9. The purpose of this program is to stimulate economic
11 development, and hasten California's economic recovery, by
12 granting tax credits for investment in California, including, but
13 not limited to, retail businesses, real property, financial institutions,
14 and schools. The California Tax Credit Allocation Committee shall
15 have responsibility for the administration of this program as
16 provided in this section and Section 17053.9. The program shall
17 be as follows:

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

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

26 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (iii) Less than 5 percent of the average of the aggregate
39 unadjusted base of the property of the entity is attributable to

1 collectibles, as defined in Section 408(m)(2) of the Internal
2 Revenue Code.

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

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

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

14 (5) “Qualified business” has the same meaning as that in Section
15 1397C(d) of the Internal Revenue Code except that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (E) Any equity investment in, or loan to, a qualified community
39 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.

(E) *Requires the committee to annually reserve the following:*

(i) *At least 15 percent of the tax credits for community development entities that target businesses located in low-income communities facing disproportionate environmental pollution.*

(ii) *At least 15 percent of the tax credits for community development entities that target rural areas, including businesses providing equipment or supplies to agricultural producers, packers, handlers, and processors.*

(iii) *At least 20 percent of the tax credits for community development entities that target businesses in inner-city areas.*

(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

1 entity even if the investment has been sold or repaid, provided that
2 the community development entity reinvests an amount equal to
3 the capital returned to or recovered by the community development
4 entity from the original investment, exclusive of any profits
5 realized, in another qualified low-income community investment
6 within 12 months of the receipt of that capital. A community
7 development entity shall not be required to reinvest capital returned
8 from qualified low-income community investments after the sixth
9 anniversary of the issuance of the qualified equity investment, the
10 proceeds of which were used to make the qualified low-income
11 community investment, and the qualified low-income community
12 investment shall be considered held by the community development
13 entity through the seventh anniversary of the qualified equity
14 investment's issuance.

15 (g) This section shall remain in effect only until December 1,
16 2020, and as of that date is repealed.

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

20 SEC. 7. Section 23623 of the Revenue and Taxation Code, as
21 added by Section 8 of Chapter 17 of the Third Extraordinary
22 Session of the Statutes of 2009, is amended to read:

23 23623. (a) For each taxable year beginning on or after January
24 1, 2009, there shall be allowed as a credit against the "tax," as
25 defined in Section 23036, three thousand dollars (\$3,000) for each
26 net increase in qualified full-time employees, as specified in
27 subdivision (c), hired during the taxable year by a qualified
28 employer.

29 (b) For purposes of this section:

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

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

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

36 (B) A qualified employee who was a salaried employee and
37 was paid compensation during the taxable year for full-time
38 employment, within the meaning of Section 515 of the Labor Code,
39 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 “tax,” the excess may be carried over to reduce the “tax” in
12 the following year, and succeeding seven years if necessary, until
13 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 (g) of Section 24416.20, without application of
24 paragraph (7) of that subdivision, shall apply.

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

29 (B) For purposes of this paragraph, the cutoff 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 17053.80 that
33 cumulatively total one hundred million dollars (\$100,000,000) for
34 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 cutoff date, the date a return is received, and whether
39 a return has been timely filed for purposes of this subdivision may
40 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, 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 splitups, 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 cutoff 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.

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

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