AMENDED IN ASSEMBLY APRIL 11, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 2656

Introduced by Assembly Member Charles Calderon

February 24, 2012

An act to ~~amend Section 17085~~ *add and repeal Division 4 (commencing with Section 64140) of Title 6.7 of the Government Code, and to add and repeal Sections 17053.60 and 23660* of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2656, as amended, Charles Calderon. ~~Personal income taxes: retirement plans: early distributions.~~ *California Transportation Financing Authority: tax credit certificates for exporters and importers: income tax credit.*

Existing law creates the California Transportation Financing Authority, with various powers and duties relative to the financing of transportation projects.

This bill would authorize the authority to award tax credit certificates to exporters and importers, as defined, that demonstrate to the satisfaction of the authority that they have increased their cargo tonnage or value through California ports and airports by specified amounts or have created and filled new cargo-moving jobs for California residents or have invested capital into a cargo facility. The bill would authorize $500 million in tax credit certificates to be awarded by the authority for taxable years beginning on or after January 1, 2013, and before January 1, 2018. The bill would authorize the authority to impose fees to cover its costs in that regard, with fees to be deposited in the

Job and Trade Competitiveness Fee Account, which the bill would create in the State Treasury. The bill would authorize the authority to borrow money until the time that sufficient fee revenue is available, with loans made to the authority to be repayable solely from revenues in the account.

The bill would make legislative findings and declarations.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.

This bill would, for taxable years beginning on or after January 1, 2013, and before January 1, 2018, allow a credit in an amount not to exceed $250,000 against the taxes imposed by those laws if a taxpayer receives a tax credit certificate and increases its exports or imports through California ports or airports, creates and fills a new cargo-moving job in California, or makes a capital expenditure for a cargo facility in California, as specified.

This bill would take effect immediately as a tax levy.

~~The Personal Income Tax Law, in modified conformity to federal income tax laws, imposes an additional tax upon early distributions from specified retirement plans, as provided.~~

~~This bill would, for taxable years beginning on or after January 1, 2013, not impose that additional tax on the first $50,000, or 50% of value of the retirement account, whichever is less, distributed to an individual for the purpose of paying qualified mortgage costs, as defined.~~

~~This bill would take effect immediately as a tax levy.~~

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

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

SECTION 1. Division 4 (commencing with Section 64140) is added to Title 6.7 of the Government Code, to read:

DIVISION 4. JOB AND TRADE COMPETITIVENESS ACT

64140. (a) The Legislature finds and declares all of the following:

(1) California is the international trade leader of the United States as the gateway to the dynamic economies of the Pacific Rim. International trade is one of the most important economic and job creation drivers of the state and a key to the state's economic

recovery. Together, the three California customs districts of Los Angeles, San Diego, and San Francisco led the nation by processing approximately $500 billion in two-way trade value in 2010. The combined California ports of Los Angeles, Long Beach, and Oakland are the busiest seaports in the nation, handling approximately 45 percent of all the waterborne containerized cargo coming into the United States.

(2) California, however, must do more to ensure that California ports remain competitive, as the Gulf, East Coast, and Mexican ports work to attract business away from California seaports and competition intensifies after the expansion of the Panama Canal in 2014. California ports are taking action to retain market share by expanding terminal capacity and investing in other trade-related infrastructure projects, but more needs to be done to protect California's vitally important international trade sector, including creating incentives to maintain and grow new business-, manufacturing-, and trade-related jobs in the years ahead.

(b) It is the intent of the Legislature to boost exports and imports through California ports and airports by providing tax incentives for California exporters and importers and by providing tax incentives for increasing cargo-moving capacity.

(c) Providing California tax credits to exporters and importers through California ports and airports and increasing cargo-moving capacity at California's ports and airports will support President Obama's national export initiative.

64141. For the purposes of this division, the following terms have the following meanings:

(a) "Authority" means the California Transportation Financing Authority established in Section 64101.

(b) "Export cargo tonnage" means the weight of cargo exported through California ports and airports by an exporter to destinations outside the United States.

(c) "Export cargo value" means the value of exported cargo as certified by the applicant for a tax credit certificate.

(d) "Exporter" means a California taxpayer that is the shipper of record of agricultural products or manufactured goods on an ocean bill of lading or on an air waybill.

(e) "Import cargo tonnage" means the weight of cargo imported by an importer through California ports and airports by that importer from outside the United States.

(f) "Import cargo value" means the value of imported cargo as certified by the applicant for a tax credit certificate.

(g) "Importer" means a California taxpayer that is the consignee of record of agricultural products or manufactured goods on an ocean bill of lading or on an air waybill.

(h) "New cargo-moving job" means a 40 hour or more per week position, for one employee or a combination of employees, in California, related to an increase in export or import cargo volume through a port or airport in California, created and filled during a taxable year beginning on or after January 1, 2013, and before January 1, 2018, by an importer or exporter.

(i) "Tax credit certificate" means a certificate awarded by the authority to an exporter or importer evidencing the right of the exporter or importer to claim the tax credits provided for in this division in the amount specified in the certificate.

64142. (a) The authority may award a tax credit certificate to a person that is an exporter or importer pursuant to subdivisions (b) and (c) in an amount that is not greater than two hundred fifty thousand dollars ($250,000) for a taxable year. The total amount of tax credit certificates authorized to be awarded pursuant to subdivision (b) is two hundred fifty million dollars ($250,000,000) and pursuant to subdivision (c) is two hundred fifty million dollars ($250,000,000) for a total of five hundred million dollars ($500,000,000) to be awarded pro rata over the taxable years beginning on or after January 1, 2013, and before January 1, 2018.

(b) Subject to the limitations in subdivision (e), tax credit certificates may be awarded by the authority to any of the following:

(1) Exporters that demonstrate to the satisfaction of the authority that they have increased their export cargo tonnage through California ports in a taxable year beginning on or after January 1, 2013, and before January 1, 2018, by at least 5 percent over their export cargo tonnage through California ports for the preceding taxable year.

(2) Importers that demonstrate to the satisfaction of the authority that they have increased their import cargo tonnage through California ports in a taxable year beginning on or after January 1, 2013, and before January 1, 2018, by at least 5 percent over

their import cargo tonnage through California ports for the preceding taxable year.

(3) Exporters that demonstrate to the satisfaction of the authority that they have increased their export cargo value through California airports in a taxable year beginning on or after January 1, 2013, and before January 1, 2018, by at least 5 percent over their export cargo tonnage through California airports for the preceding taxable year.

(4) Importers that demonstrate to the satisfaction of the authority that they have increased their import cargo value through California airports in taxable year beginning on or after January 1, 2013, and before January 1, 2018, by at least 5 percent over their import cargo tonnage through California airports for the preceding taxable year.

(5) Exporters or importers that demonstrate to the satisfaction of the authority that they have exported or imported export or import cargo tonnage through California ports in excess of 400,000 tons in a taxable year beginning on or after January 1, 2013, and before January 1, 2018, and that they did not export or import cargo through California ports in the preceding taxable year.

(6) Exporters and importers that demonstrate to the satisfaction of the authority that they have exported or imported cargo through California airports with export or import cargo value in excess of two hundred fifty thousand dollars ($250,000) in a taxable year beginning on or after January 1, 2013, and before January 1, 2018, and that they did not export or import cargo through California airports in the preceding taxable year.

(c) (1) Subject to the limitations in subdivision (e), tax credit certificates may be awarded by the authority to exporters and importers that demonstrate to the satisfaction of the authority that they have created and filled all new cargo-moving jobs in California on account of an increase in the cargo volume of the exporter or importer. The number of new cargo-moving jobs created and filled in a taxable year shall be determined by subtracting the total number of full-time cargo-moving jobs, defined as 2,000 paid hours per employee per year, filled by the taxpayer in the preceding taxable year from the total number of full-time cargo-moving jobs filled by the taxpayer in the taxable year.

(2) Subject to the limitations in subdivision (e), tax credit certificates may be awarded by the authority to exporters and importers that demonstrate to the satisfaction of the authority that they have made capital expenditures on a cargo facility in California.

(d) The authority shall develop and provide application forms for use by applicants for tax credit certificates. The application form shall provide for inclusion of the applicant's taxpayer identification number.

(e) If the authority projects that requests for tax credit certificates are likely to exceed the amount permitted by this division to be awarded by the authority during any calendar year, the authority shall defer its awards for that calendar year until the end of the calendar year and allocate awards for that calendar year pro rata, on the basis of total tax credits certificates that would be awarded in the absence of a limitation on awards, among all applicants approved pursuant to subdivisions (b) and (c).

(f) (1) The authority shall establish and charge applicants fees that it determines are reasonably sufficient to cover all of its costs in carrying out its responsibilities under this division. The fees shall be deposited in the Job and Trade Competitiveness Fee Account, which is hereby established in the State Treasury. Moneys in the account shall be available, upon appropriation by the Legislature, to the authority for the purpose of implementing this division.

(2) Until the time that sufficient revenue is received by the authority, the authority may borrow any money as may be required for the purpose of meeting necessary expenses under this division, not to exceed the amount appropriated. A loan made to the authority shall be repayable solely from moneys appropriated to the authority from the Job and Trade Competitiveness Fee Account and shall not constitute a general obligation of the state for which the full faith and credit of the state are pledged.

(g) The authority shall determine the amount of each tax credit pursuant to this division and Sections 17053.60 and 23660 of the Revenue and Taxation Code, and the Franchise Tax Board shall not be responsible for determining the amount of that tax credit. The authority shall provide the Franchise Tax Board with an electronic copy of each tax credit certification awarded by it. The tax credit certificate shall include the amount of the tax credit, the

name and taxpayer identification number of the exporter or importer to which the certificate was awarded.

(h) A tax credit certificate awarded pursuant to this section shall not be transferable.

(i) This section shall remain in effect only until December 1, 2018, and as of that date is repealed.

SEC. 2. Section 17053.60 is added to the Revenue and Taxation Code, to read:

17053.60. (a) (1) For each taxable year beginning on or after January 1, 2013, and before January 1, 2018, and subject to subdivision (c), there shall be allowed as a credit against the "net tax," as defined in Section 17039, the amount specified in paragraph (2).

(2) (A) (i) If an exporter or importer imported or exported during the preceding taxable year, the credit amount will be determined as follows:

(I) The amount of credit allowed for an exporter or importer that increases exports or imports through ports in California shall be three dollars and twelve and one-half cents ($3.125) per ton of increased exports and imports through ports in California in a taxable year attributable to the exporter or importer.

(II) The amount of credit allowed for an exporter or importer that increases exports or imports through airports in California shall be one thousand dollars ($1,000) for each ten thousand dollars ($10,000) of increased exports and imports through airports in California in a taxable year attributable to the exporter or importer.

(ii) If an exporter or importer did not import or export during the preceding taxable year, the credit amount shall be determined as follows:

(I) The amount of credit allowed for an exporter or importer that exports or imports 400,000 or more tons through ports in California in a taxable year shall be three dollars and twelve and one-half cents ($3.125) per ton of exports and imports through ports in California in a taxable year attributable to the exporter or importer.

(II) The amount of credit allowed for an exporter or importer that exports or imports two hundred fifty thousand dollars ($250,000) or more through airports in California shall be one thousand dollars ($1,000) for each ten thousand dollars ($10,000)

of exports and imports through airports in California in a taxable year attributable to the exporter or importer.

(B) The amount of the credit shall be three thousand dollars ($3,000) for each new cargo-moving job created and filled by an exporter or importer in a taxable year or 2 percent of the amount of capital expenditures for a cargo facility made by an exporter or importer during a taxable year, whichever is greater.

(b) For purposes of this section:

(1) "Cargo facility" means a capital project at a port or airport in California designed to increase cargo-moving capacity at that port or airport and that is expended in a taxable year and has a useful life of five years or more.

(2) "Exporter" has the same meaning as provided in subdivision (d) of Section 64141 of the Government Code.

(3) "Importer" has the same meaning as provided in subdivision (g) of Section 64141 of the Government Code.

(4) "Increased exports or imports" means the difference between the amount of exports and imports, whether measured by tons or dollars, in a current taxable year and the preceding taxable year.

(5) "New cargo-moving job" has the same meaning as provided in subdivision (h) of Section 64141 of the Government Code.

(c) The amount of the credit allowed to a taxpayer under this section shall be no more than two hundred fifty thousand dollars ($250,000) for a taxable year and shall be limited to the amount specified in the tax credit certificate issued to the taxpayer pursuant to Section 64140 of the Government Code.

(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 nine years, if necessary, until the credit is exhausted.

(e) This section shall remain in effect only until December 1, 2018, and as of that date is repealed.

SEC. 3. Section 23660 is added to the Revenue and Taxation Code, to read:

23660. (a) (1) For each taxable year beginning on or after January 1, 2013, and before January 1, 2018, and subject to subdivision (c), there shall be allowed as a credit against the "tax," as defined in Section 23036, an amount specified in paragraph (2).

(2) (A) (i) If an exporter or importer imported or exported during the preceding taxable year, the credit amount will be determined as follows:

(I) The amount of credit allowed for an exporter or importer that increases exports or imports through ports in California shall be three dollars and twelve and one-half cents ($3.125) per ton of increased exports and imports through ports in California in a taxable year attributable to the exporter or importer.

(II) The amount of credit allowed for an exporter or importer that increases exports or imports through airports in California shall be one thousand dollars ($1,000) for each ten thousand dollars ($10,000) of increased exports and imports through airports in California in a taxable year attributable to the exporter or importer.

(ii) If an exporter or importer did not import or export during the preceding taxable year, the credit amount shall be determined as follows:

(I) The amount of credit allowed for an exporter or importer that exports or imports 400,000 or more tons through ports in California in a taxable year shall be three dollars and twelve and one-half cents ($3.125) per ton of exports and imports through ports in California in a taxable year attributable to the exporter or importer.

(II) The amount of credit allowed for an exporter or importer that exports or imports two hundred fifty thousand dollars ($250,000) or more through airports in California shall be one thousand dollars ($1,000) for each ten thousand dollars ($10,000) of exports and imports through airports in California in a taxable year attributable to the exporter or importer.

(B) The amount of the credit shall be three thousand dollars ($3,000) for each new cargo-moving job created and filled by an exporter or importer in a taxable year pursuant to Section 64142 of the Government Code or 2 percent of the amount of capital expenditures for a cargo facility made by an exporter or importer during a taxable year, whichever is greater.

(b) For purposes of this section:

(1) "Cargo facility" means a capital project at a port or airport in California designed to increase cargo-moving capacity at that port or airport and that is expended in a taxable year and has a useful life of five years or more.

(2) “Exporter” has the same meaning as provided in subdivision (d) of Section 64141 of the Government Code.

(3) “Importer” has the same meaning as provided in subdivision (g) of Section 64141 of the Government Code.

(4) “Increased exports or imports” means the difference between the amount of exports and imports, whether measured by tons or dollars, in a current taxable year and the preceding taxable year.

(5) “New cargo-moving job” has the same meaning as provided in subdivision (h) of Section 64141 of the Government Code.

(c) The amount of credit allowed to a taxpayer under this section shall be no more than two hundred fifty thousand dollars ($250,000) for a taxable year and shall be limited to the amount specified in the credit certificate issued to the taxpayer pursuant to Section 64140 of the Government Code.

(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 nine years, if necessary, until the credit is exhausted.

(e) This section shall remain in effect only until December 1, 2018, and as of that date is repealed.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

~~SECTION 1. Section 17085 of the Revenue and Taxation Code is amended to read:~~

~~17085. Section 72 of the Internal Revenue Code, relating to annuities; certain proceeds of endowment and life insurance contracts, is modified as follows:~~

~~(a) The amendments and transitional rules made by Public Law 99-514 shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except that the repeal of Section 72(d) of the Internal Revenue Code, relating to repeal of special rule for employees’ annuities, shall apply only to the following:~~

~~(1) Any individual whose annuity starting date is after December 31, 1986.~~

~~(2) At the election of the taxpayer, any individual whose annuity starting date is after July 1, 1986, and before January 1, 1987.~~

~~(b) The amount of a distribution from an individual retirement account or annuity or employee trust or employee annuity that is~~

~~includable in gross income for federal purposes shall be reduced for purposes of this part by the lesser of either of the following:~~

~~(1) An amount equal to the amount includable in federal gross income for the taxable year.~~

~~(2) An amount equal to the basis in the account or annuity allowed by Section 17507 (relating to individual retirement accounts and simplified employee pensions), the increased basis allowed by Sections 17504 and 17506 (relating to plans of self-employed individuals), the increased basis allowed by Section 17501, or the increased basis allowed by Section 17551 that is remaining after adjustment for reductions in gross income under this provision in prior taxable years.~~

~~(c) (1) Except as provided in paragraph (2), the amount of the additional tax imposed under this part shall be computed in accordance with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code, as applicable for federal income tax purposes for the same taxable year, using a rate of 2½ percent, in lieu of the rate provided in those sections.~~

~~(2) In the case where Section 72(t)(6) of the Internal Revenue Code, relating to special rules for simple retirement accounts, as applicable for federal income tax purposes for the same taxable year, applies, the rate in paragraph (1) shall be 6 percent in lieu of the 2½ percent rate specified therein.~~

~~(3) (A) Notwithstanding paragraphs (1) and (2), for taxable years beginning on or after January 1, 2013, an individual shall not pay the additional tax described in paragraph (1) for early withdrawal of a qualified principal residence mortgage payment distribution from his or her retirement account when the moneys are used to reduce qualified mortgage costs.~~

~~(B) For the purposes of this paragraph:~~

~~(i) "Qualified mortgage costs" means amounts paid as principal or interest on acquisition indebtedness, as defined in Section 163(h)(3)(B) of the Internal Revenue Code, except that the dollar limitation in Section 163(h)(3)(B)(ii) of the Internal Revenue Code shall not apply.~~

~~(ii) "Qualified principal residence mortgage payment distribution" means a payment or distribution received by an individual to the extent that the payment or distribution is used by the individual before the close of the 120th day after the day on which that payment or distribution is received to pay qualified~~

~~mortgage costs with respect to a principal residence of the individual or spouse of the individual.~~

~~(C) The aggregate amount of qualified principal residence mortgage payment distributions received by an individual for all taxable years shall not exceed fifty thousand dollars ($50,000) or 50 percent of the value of his or her retirement account on the day of the withdrawal.~~

~~(D) The Franchise Tax Board may promulgate regulations as necessary or appropriate to carry out the purposes of this paragraph.~~

~~(d) Section 72(f)(2) of the Internal Revenue Code shall be applicable without applying the exceptions which immediately follow that paragraph.~~

~~(e) The amendments made by Section 844 of the Pension Protection Act of 2006 (Public Law 109-280) to Section 72(e) of the Internal Revenue Code, shall not apply.~~

~~SEC. 2. 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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