

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 364

Introduced by Senator Yee

February 15, 2011

An act to add Sections 6372, ~~17060, and 23603~~ *and 19137* to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 364, as amended, Yee. Sales and use taxes: income taxes: business tax incentives: reporting information and penalty.

The Sales and Use Tax Law, the Personal Income Tax Law, and the Corporation Tax Law authorize various credits, deductions, exclusions, exemptions, and other tax benefits with respect to the taxes imposed by those laws.

This bill would, with respect to any ~~specified~~ business tax incentive *or business tax credit, as defined*, enacted after January 1, 2012, require a qualified taxpayer, as defined, ~~to pay a penalty in the amount of \$5,000 for each full-time job that is a net decrease over a 10% decrease in workforce that benefits from a business tax incentive or business tax credit and that has a specified net decrease in its employees to pay a penalty, as specified.~~ This bill would limit the amount of this penalty to the ~~total value~~ amount of specified tax benefits *or credits* claimed on the tax return or returns of the ~~previous preceding~~ 3 calendar or taxable ~~year~~ years.

This bill would also require a *qualified* taxpayer doing business in California that claims a business tax incentive to submit to the State Board of Equalization *annually on a return* or to the Franchise Tax Board on the original return specified information, including the number

of annual full-time equivalent employees employed by the qualified taxpayer in the state in the current and previous year. The bill would impose a penalty if that information is not provided.

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

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

1 SECTION 1. (a) The Legislature finds and declares the
2 following:

3 (1) The nation's economy began to recover in 2010, but
4 California still has the highest unemployment rate in the country.

5 (2) The creation of quality jobs, in key expanding and emerging
6 industries, is critical to maintain California's status as a center
7 of productivity, innovation, and growth.

8 (b) It is the intent of the Legislature to do all of the following:

9 (1) Encourage economic recovery and a deep and lasting
10 rebound by increasing the number of quality jobs in this state.

11 (2) Encourage the state to invest in ensuring high-quality
12 employment through transparency and accountability at all levels
13 of business, in order to promote economic recovery and job
14 creation.

15 (3) Provide tax incentives, benefits, deductions, and credits only
16 to businesses that share the vision and commitment of a
17 transparent, highly functioning, high-employment state.

18 SEC. 2. Section 6372 is added to the Revenue and Taxation
19 Code, to read:

20 6372. (a) Notwithstanding any other law, for calendar years
21 beginning on or after January 1, 2012, a qualified taxpayer that
22 benefits from a business tax incentive shall annually include on a
23 timely filed original return, in the form and manner as required
24 by the forms and instructions prescribed by the board, the number
25 of annual full-time equivalent employees employed by the qualified
26 taxpayer in the state for the current calendar year and the
27 preceding calendar year.

28 (b) For purposes of this section:

29 (1) "Annual full-time equivalent" means either of the following:

30 (A) In the case of an employee paid hourly qualified wages,
31 "annual full-time equivalent" means the total number of hours

1 worked for the qualified taxpayer by an employee (not to exceed
2 1,820 hours per employee) divided by 1,820.

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

6 (2) “Business tax incentive” means an exemption or exclusion
7 from the taxes imposed by this part that is based on qualified wages
8 or the number of persons employed by an act that takes effect on
9 or after January 1, 2012.

10 (3) (A) “Qualified taxpayer” means a person that is a
11 manufacturer or a person that engages in research and
12 development activities in this state, and that pays qualified wages
13 to more than 100 annual full-time equivalent employees in this
14 state.

15 (B) For the purpose of determining whether a person is a
16 qualified taxpayer, all employees of the trades or businesses that
17 are treated as related under Section 267, 318, or 707 of the Internal
18 Revenue Code shall be treated as employed by a single person.

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

22 (c) Notwithstanding any other law, if a qualified taxpayer that
23 benefits from a business tax incentive has a net decrease in the
24 number of annual full-time equivalent employees in this state, in
25 a calendar year that is equal to or greater than 10 percent of the
26 total annual full-time equivalent employees of the qualified
27 taxpayer in this state in the preceding calendar year, the qualified
28 taxpayer shall be subject to a penalty in the amount specified in
29 subdivision (d).

30 (d) The penalty imposed under this section shall be computed
31 as follows:

32 (1) Ninety percent of the annual full-time equivalents, including
33 any fractional portion thereof, for the prior calendar year, less

34 (2) The annual full-time equivalents, including any fractional
35 portion thereof, for the current calendar year, multiplied by

36 (3) Five thousand dollars (\$5,000) per annual full-time
37 equivalent, including any fractional portion thereof, as computed
38 under paragraphs (1) and (2).

39 (4) (A) For purposes of paragraphs (1) and (2), the employees
40 of any trade or business acquired by the qualified taxpayer during

1 the current calendar year shall be aggregated with the qualified
2 taxpayer's existing employees.

3 (B) The provisions of subdivision (f) of Section 17276.20, except
4 for paragraph (7) thereof, and subdivision (g) of Section 24416.20,
5 except for paragraph (7) thereof, shall apply in determining
6 whether the acquisition of a trade or business during the calendar
7 year is required to be included in the calculation under this
8 subdivision.

9 (5) If the amount computed under paragraph (2) exceeds the
10 amount computed under paragraph (1), the penalty shall be zero.

11 (6) The amount of the penalty shall not exceed an amount equal
12 to the amount of business tax incentives obtained by the qualified
13 taxpayer for the three preceding calendar years.

14 (e) A qualified taxpayer that fails to timely provide the
15 information required by subdivision (a) shall pay a penalty of ____
16 dollars (\$____) for each failure, unless that failure is due to
17 reasonable cause and not due to willful neglect. The penalty
18 imposed pursuant to this subdivision shall be in addition to any
19 penalty imposed under subdivision (c).

20 (f) (1) The board may prescribe rules, guidelines, or procedures
21 necessary or appropriate to carry out the purposes of this section.

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

27 (3) This section shall not limit the authority of the board to audit
28 the information provided by the taxpayer pursuant to subdivision
29 (a).

30 SEC. 3. Section 19137 is added to the Revenue and Taxation
31 Code, to read:

32 19137. (a) Notwithstanding any other law, for taxable years
33 beginning on or after January 1, 2012, a qualified taxpayer doing
34 business in this state that claims any business tax credit shall
35 annually include on a timely filed original return, in the form and
36 manner as required by the forms and instruction prescribed by the
37 Franchise Tax Board, the number of annual full-time equivalent
38 employees employed by the qualified taxpayer in the state for the
39 current taxable year and the preceding taxable year.

40 (b) For purposes of this section:

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

2 (A) In the case of an employee paid hourly qualified wages,
3 “annual full-time equivalent” means the total number of hours
4 worked for the qualified taxpayer by an employee (not to exceed
5 1,820 hours per employee) divided by 1,820.

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

9 (2) “Business tax credit” means a credit that is based on
10 qualified wages or the number of employees employed against the
11 “net tax,” as defined in Section 17039, or against the “tax,” as
12 defined in Section 23036, that is added by an act that takes effect
13 beginning on or after January 1, 2012.

14 (3) (A) “Qualified taxpayer” means a person that is engaged
15 in or carrying on a trade, business, profession, vocation, calling,
16 or commercial activity, in the state, and that pays qualifying wages
17 to more than 100 annual full-time equivalent employees in this
18 state.

19 (B) For the purpose of determining whether a person is a
20 qualified taxpayer, all employees of the trades or businesses that
21 are treated as related under Section 267, 318, or 707 of the Internal
22 Revenue Code shall be treated as employed by a single qualified
23 taxpayer.

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

27 (c) Notwithstanding any other law, if a qualified taxpayer that
28 claims a business tax credit against the “net tax,” as defined in
29 Section 17039, or against the “tax,” as defined in Section 23036,
30 has a net decrease in the number of annual full-time equivalent
31 employees equal to or greater than 10 percent of the total annual
32 full-time equivalent employees of the qualified taxpayer in this
33 state in the prior taxable year, the qualified taxpayer shall be
34 subject to a penalty in the amount specified in subdivision (d).

35 (d) The penalty imposed under this section shall be computed
36 as follows:

37 (1) Ninety percent of the annual full-time equivalents, including
38 any fractional portion thereof, for the prior calendar year, less

39 (2) The annual full-time equivalents, including any fractional
40 portion thereof, for the current calendar year, multiplied by

1 (3) Five thousand dollars (\$5,000) per annual full-time
2 equivalent, including any fractional portion thereof, as computed
3 under paragraphs (1) and (2).

4 (4) (A) For purposes of paragraphs (1) and (2), the employees
5 of any trade or business acquired by the qualified taxpayer during
6 the current calendar year shall be aggregated with the qualified
7 taxpayer's existing employees.

8 (B) The provisions of subdivision (f) of Section 17276.20, except
9 for paragraph (7) thereof, and subdivision (g) of Section 24416.20,
10 except for paragraph (7) thereof, shall apply in determining
11 whether the acquisition of a trade or business during the calendar
12 year is required to be included in the calculation under this
13 subdivision.

14 (5) If the amount computed under paragraph (2) exceeds the
15 amount computed under paragraph (1), the penalty shall be zero.

16 (6) The amount of the penalty shall not exceed an amount equal
17 to the amount of business tax credits generated by the qualified
18 taxpayer on the tax returns of the three preceding taxable years.

19 (e) A qualified taxpayer that fails to provide the information
20 required by subdivision (a) shall pay a penalty of ____ dollars
21 (\$____) for each failure, unless that failure is due to reasonable
22 cause and not due to willful neglect. The penalty imposed pursuant
23 to this subdivision shall be in addition to any penalty imposed
24 under subdivision (c).

25 (f) (1) If any business tax credit is allowed to be sold, assigned,
26 or otherwise transferred under the provisions of this part to another
27 taxpayer, any sale, assignment, or other transfer shall only be
28 valid if the seller or assignor expressly agrees to provide, and
29 continues to provide, to the buyer or assignee and the Franchise
30 Tax Board, in the form and manner specified by the Franchise Tax
31 Board, the information required by subdivision (a) in order to
32 determine whether a penalty should be imposed as calculated in
33 subdivision (d) with respect to the seller or assignor.

34 (2) If a penalty is imposed pursuant to subdivision (c), the buyer
35 or assignee shall be required to include in its net income the
36 amount of the penalty.

37 (3) This subdivision shall apply to any business tax credit that
38 is sold, assigned, or otherwise transferred under the provisions of
39 this part, notwithstanding any other provision of this part to the
40 contrary.

1 (4) Notwithstanding any other law, if a seller or assignor fails
2 to satisfy the reporting requirements of this subdivision, then a
3 notice of proposed deficiency assessment attributable to the
4 business tax credit with respect to which the reporting requirements
5 were not satisfied may be mailed to the buyer or assignee within
6 four years from the date on which the reporting requirements are
7 satisfied by the seller or assignor.

8 (g) (1) The Franchise Tax Board may prescribe rules,
9 guidelines, or procedures necessary or appropriate to carry out
10 the purposes of this section.

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

16 (3) This section shall not limit the authority of the Franchise
17 Tax Board to audit the information provided by the taxpayer
18 pursuant to subdivision (a).

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21 **All matter omitted in this version of the bill**
22 **appears in the bill as amended in the**
23 **Senate, March 21, 2011. (JR11)**
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