AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 3, 2011

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 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 business tax incentive or business tax credit, as defined, enacted after January 1, 2012, require a qualified taxpayer, as defined, 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 amount of specified tax benefits or credits claimed on the tax return or returns of the preceding 3 calendar or taxable 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:

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

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

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

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

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

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

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

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

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

(b) For purposes of this section:

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

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

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

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

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

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

~~(6)~~

(4) "Qualified wages" means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

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

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

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

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

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

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

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

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

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

(6) The amount of the penalty shall not exceed an amount equal to the amount of business tax incentives that benefitted the qualified taxpayer for the three preceding calendar years.

(e) A qualified taxpayer that fails to timely provide the information required by subdivision (a) shall pay a penalty of ~~____ dollars ($____)~~ *five thousand dollars ($5,000)* for each failure, unless that failure is due to reasonable cause and not due to willful neglect. The penalty imposed pursuant to this subdivision shall be in addition to any penalty imposed under subdivision (c).

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

(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 State Board of Equalization pursuant to this section.

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

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

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

(b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) A qualified taxpayer that fails to provide the information required by subdivision (a) shall pay a penalty of ~~____ dollars ($____)~~ *five thousand dollars ($5,000)* for each failure, unless that failure is due to reasonable cause and not due to willful neglect. The penalty imposed pursuant to this subdivision shall be in addition to any penalty imposed under subdivision (c).

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

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

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

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

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

(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.

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

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