

AMENDED IN ASSEMBLY JUNE 14, 2011

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
(Coauthor: Assembly Member Huffman)

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~~ *the effective date of this bill*, 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:

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 of
7 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 transparent,
17 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 by
24 the forms and instructions prescribed by the board, the number of
25 annual full-time equivalent employees employed by the qualified
26 taxpayer in the state for the current calendar year and the preceding
27 calendar year.

28 (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 incentive” means an exemption or exclusion
10 from the taxes imposed by this part that is based on qualified wages
11 or the number of ~~persons employed~~ *employees employed*, by an
12 act that takes effect ~~on or after January 1, 2012~~ *after the effective*
13 *date of the act adding this section.*

14 (3) (A) “Qualified taxpayer” means a person that is a
15 manufacturer or a person that engages in research and development
16 activities in this state, and that pays qualified wages to more than
17 100 annual full-time equivalent employees in this state.

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

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

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

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

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

37 (2) The annual full-time equivalents, including any fractional
38 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~~ *reduced the tax of the qualified taxpayer on the qualified taxpayer's tax returns* 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 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

1 annually include on a timely filed original return, in the form and
2 manner as required by the forms and instruction prescribed by the
3 Franchise Tax Board, the number of annual full-time equivalent
4 employees employed by the qualified taxpayer in the state for the
5 current taxable year and the preceding taxable year.

6 (b) For purposes of this section:

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

8 (A) In the case of an employee paid hourly qualified wages,
9 “annual full-time equivalent” means the total number of hours
10 worked for the qualified taxpayer by an employee (not to exceed
11 1,820 hours per employee) divided by 1,820.

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

15 (2) “Business tax credit” means a credit that is based on qualified
16 wages or the number of employees employed against the “net tax,”
17 as defined in Section 17039, or against the “tax,” as defined in
18 Section 23036, ~~that is added by an act that takes effect beginning~~
19 ~~on or after January 1, 2012, by an act that takes effect after the~~
20 *effective date of the act adding this section.*

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

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

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

34 (c) Notwithstanding any other law, if a qualified taxpayer that
35 claims a business tax credit against the “net tax,” as defined in
36 Section 17039, or against the “tax,” as defined in Section 23036,
37 has a net decrease in the number of annual full-time equivalent
38 employees *in this state in a taxable year that is* equal to or greater
39 than 10 percent of the total annual full-time equivalent employees
40 of the qualified taxpayer in this state in the prior taxable year, the

1 qualified taxpayer shall be subject to a penalty in the amount
2 specified in subdivision (d).

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

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

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

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

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

16 (B) The provisions of subdivision (f) of Section 17276.20,
17 except for paragraph (7) thereof, and subdivision (g) of Section
18 24416.20, except for paragraph (7) thereof, shall apply in
19 determining whether the acquisition of a trade or business during
20 the calendar year is required to be included in the calculation under
21 this subdivision.

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

24 (6) The amount of the penalty shall not exceed an amount equal
25 to the amount of business tax credits ~~claimed by the qualified~~
26 ~~taxpayer on the tax returns of that reduced the "net tax," as defined~~
27 *in Section 17039, or the "tax," as defined in Section 23036, of the*
28 *qualified taxpayer, as reflected on the qualified taxpayer's income*
29 *or franchise tax returns for the three preceding taxable years.*

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

36 (f) (1) If any business tax credit is allowed to be sold, assigned,
37 or otherwise transferred under the provisions of this part to another
38 taxpayer, any sale, assignment, or other transfer shall only be valid
39 if the seller or assignor expressly agrees to provide, and continues
40 to provide, to the buyer or assignee and the Franchise Tax Board,

1 in the form and manner specified by the Franchise Tax Board, the
2 information required by subdivision (a) in order to determine
3 whether a penalty should be imposed as calculated in subdivision
4 (d) with respect to the seller or assignor.

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

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

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

19 (g) (1) The Franchise Tax Board may prescribe rules,
20 guidelines, or procedures necessary or appropriate to carry out the
21 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 Franchise Tax Board
26 pursuant to this section.

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