AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JULY 11, 2011

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 Section 19137 to the Revenue and Taxation Code, relating to taxation.

legislative counsel's digest

SB 364, as amended, Yee. Income taxes: business tax credits: reporting information and penalty.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits with respect to the taxes imposed by those laws.

This bill would, with respect to any business tax credit, as defined, enacted after the effective date of this bill, require a qualified taxpayer, as defined, that claims a business tax credit and that has a specified net decrease in its employees in this state to pay a penalty, as specified.

This bill would also require a qualified taxpayer to submit 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, as provided. 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 taxcredits only to businesses that share the vision and commitment of a transparent, highly functioning, high-employment state.

SEC. 2. Section 19137 is added to the Revenue and Taxation Code, to read:

19137. (a) (1) 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.

(2) For purposes of this subdivision:

(A) The employees of any trade or business acquired by the qualified taxpayer during the current taxable year shall be aggregated with the qualified taxpayer's existing employees for the current and prior year reporting purposes.

(B) The employees of any trade or business that is disposed of or otherwise is no longer a related entity under the rules of this section during the current taxable year shall be excluded from the qualified taxpayer's existing employees for the current and prior year reporting purposes.

(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.

(C) For purposes of this paragraph, if either of the taxable years being reported under subdivision (a) is a period of less than 12 months, the computation of "annual full-time equivalents" as prescribed in subparagraphs (A) and (B) shall be annualized by adjusting the numbers of hours or weeks, respectively, in the formula to equal the length of the period being reported, so that each annual full-time equivalent equals a 12-month equivalent.

~~(2) "Business tax credit" means a credit that is based on employee compensation that includes 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, added by an act that takes effect after the effective date of the act adding this section.~~

(2) "Business tax credit" means a credit against the "net tax," as defined in Section 17039, or against the "tax," as defined in Section 23036, that is (A) added by an act that takes effect after the effective date of the act adding this section, and (B) based on either employee compensation, including qualified wages, or the number of employees employed.

(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 person.

(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 in this state in a taxable 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 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 taxable year, less

(2) The annual full-time equivalents, including any fractional portion thereof, for the current taxable 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) For purposes of this subdivision:

(A) The employees of any trade or business acquired by the qualified taxpayer during the current taxable year shall be aggregated with the qualified taxpayer's existing employees.

(B) The employees of any trade or business that is disposed of or otherwise is no longer a related entity during the current taxable year shall be excluded from the qualified taxpayer's existing employees.

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

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

(B) For purposes of this section, any business tax credit that is sold, assigned, or otherwise transferred under the provisions of Part 10 (commencing with Section 17001), this part, or Part 11 (commencing with Section 23001) to another taxpayer shall be treated as reducing the "net tax," as defined in Section 17039, or the "tax," as defined in Section 23036, of the qualified taxpayer for the taxable year for which the assignment, sale, or transfer was made.

(e) A qualified taxpayer that fails to 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 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.

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