AMENDED IN ASSEMBLY MAY 21, 2013
AMENDED IN ASSEMBLY APRIL 16, 2013

CALIFORNIA LEGISLATURE— 2013–2014 REGULAR SESSION

ASSEMBLY BILL **No. 305**

Introduced by Assembly Member V. Manuel Pérez
(Coauthor(s): Assembly Member Brown, Fox, *Harkey, Nestande)*

February 12, 2013

An act to add and repeal Sections 17053.9 and 23622.9 of, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 305, as amended, V. Manuel Pérez. Income taxes: hiring credits: investment credits.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit in the amount of $3,000 for each full-time employee hired by a qualified employer applicable to taxable years beginning on or after January 1, 2009, and ending upon a cut-off date calculated based upon an estimate by the Franchise Tax Board of claims cumulatively totaling $400,000,000 for all taxable years, as specified. Existing law also creates the California Tax Credit Allocation Committee, which has specified duties in regard to low-income housing credits.

This bill would instead calculate the cut-off date for the above-described hiring credit based upon an estimate by the Franchise Tax Board of claims cumulatively totaling $200,000,000 for all taxable years, as specified.

This bill would also allow a credit under both laws, in modified conformity with a federal New Market Tax Credit, for taxable years beginning on or after January 1, 2013, and before January 1,

2020, in a specified amount for investments in low-income communities. The bill would limit the total annual amount of credit allowed pursuant to these provisions to $40,000,000 and would limit the allocation of the credit to a cumulative total of no more than $200,000,000. This bill would impose specified duties on the California Tax Credit Allocation Committee with regard to the application for, and allocation of, the credit. The bill would require the committee to establish and impose reasonable fees upon entities that apply for the allocation of the credit and use the revenue to defray the cost of administering the program, as specified, thereby making an appropriation. This bill would also appropriate $150,000 from the Tax Credit Allocation Fee Account to the committee for purposes of implementing the tax credit.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $^{2}/_{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Digest Key

Vote: 2/3 Appropriation: YES Fiscal Committee: YES Local Program: NO

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

The Legislature finds and declares all of the following:

(a) California is entering the sixth year of the worst economic recession since the Great Depression.

(b) Due to a systemic budget problem, the state is suffering from chronic revenue shortfalls based in part on increasing reliance on revenues from personal income tax rolls.

(c) Investment in small business ventures is a proven method of stimulating economic activity, creating new jobs, and generating revenue by expanding the tax base.

(d) The federal New Markets Tax Credit Program, created in 2000 with bipartisan support, has been an effective means of stimulating state and regional economies due to its ability to leverage federal funds to drive private investment in communities that would otherwise not have had access to capital. These investments accrue to small businesses, schools, and other business-related real estate projects.

(e) As of 2010, nine states, Connecticut, Florida, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Oklahoma, had enacted matching state programs. On average, these states successfully leveraged thirteen dollars ($13) in federal New Markets Tax Credit for every dollar of state credits initially allocated for the state program.

(f) As of December 29, 2012, $261,560,076 of California's small business hiring tax credit are still available.

(g) Given the current economic climate and the lack of use of the state hiring tax credit, it is reasonable for the Legislature to search for and consider other alternatives to stimulate hiring and to generate economic activity to shorten the current recession and promote permanent economic recovery through the creation of a California New Markets Tax Credit Program.

(h) There are low-income communities in the state that face multiple challenges in attracting private investment, including, but not limited to, developing and maintaining a workforce that meets the skill needs of local employers, an infrastructure that connects local businesses to external markets, and neighborhoods that are not disproportionately burdened with environmental pollutants, including air, soil, and water contamination.

~~(I)~~

(i) Given the ability of the California New Markets Tax Credit Program to stimulate private investment activity in areas that would otherwise not have access to investment capital, it is appropriate that the state consider prioritizing a portion of the California New Markets Tax Credit Program to encourage private investment in areas that face multiple challenges in attracting investment capital.

SEC. 2.

Section 17053.80 of the Revenue and Taxation Code, as added by Section 3 of Chapter 10 of the Third Extraordinary Session of the Statutes of 2009, is repealed.

SEC. 3.

Section 17053.80 of the Revenue and Taxation Code, as added by Section 3 of Chapter 17 of the Third Extraordinary Session of the Statutes of 2009, is amended to read:

17053.80.

(a) For each taxable year beginning on or after January 1, 2009, there shall be allowed as a credit against the "net tax," as defined in Section 17039, three thousand dollars ($3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.

(b) For purposes of this section:

(1) "Acquired" includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(2) “Qualified full-time employee” means:

(A) A qualified employee who was paid qualified wages during the taxable year by the qualified employer for services of not less than an average of 35 hours per week.

(B) A qualified employee who was a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified employer.

(3) A “qualified employee” shall not include any of the following:

(A) An employee certified as a qualified employee in an enterprise zone designated in accordance with Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(B) An employee certified as a qualified disadvantaged individual in a manufacturing enhancement area designated in accordance with Section 7073.8 of the Government Code.

(C) An employee certified as a qualified employee in a targeted tax area designated in accordance with Section 7097 of the Government Code.

(D) An employee certified as a qualified disadvantaged individual or a qualified displaced employee in a local agency military base recovery area (LAMBRA) designated in accordance with Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code.

(E) An employee whose wages are included in calculating any other credit allowed under this part.

(4) “Qualified employer” means a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.

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

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

(A) In the case of a full-time employee paid hourly qualified wages, “annual full-time equivalent” means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.

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

(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:

(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B).

(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.

(C) The total number of full-time employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.

(2) For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.

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

(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.

(f) For purposes of this section:

(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.

(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276.20, without application of paragraph (7) of that subdivision, shall apply.

(g) (1) (A) Credit under this section and Section 23623 shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the ~~cutoff~~ *cut-off* date established by the Franchise Tax Board.

(B) For purposes of this paragraph, the ~~cutoff~~ *cut-off* date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 23623 that cumulatively total two hundred million dollars ($200,000,000) for all taxable years.

(2) The date a return is received shall be determined by the Franchise Tax Board.

(3) (A) The determinations of the Franchise Tax Board with respect to the ~~cutoff~~ *cut-off* date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding.

(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.

(4) The Franchise Tax Board shall periodically provide notice on its Internet Web site with respect to the amount of credit under this section and Section 23623 claimed on timely filed original returns received by the Franchise Tax Board.

(h) (1) The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the limitation on total credits allowable under this section and Section 23623 and guidelines necessary to avoid the application of paragraph (2) of subdivision (f) through ~~splitups,~~ *split-ups,* shell corporations, partnerships, tiered ownership structures, or otherwise.

(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.

(i) This section shall remain in effect only until December 1 of the calendar year after the year of the ~~cutoff~~ *cut-off* date, and as of that December 1 is repealed.

SEC. 4.

Section 17053.9 is added to the Revenue and Taxation Code, to read:

17053.9.

(a) There is hereby created the California New Markets Tax Credit Program as provided in this section and Section 23622.9. The purpose of this program is to stimulate economic development, and hasten California's economic recovery, by authorizing tax credits for investment in California, including, but not limited to, retail businesses, real property, financial institutions, and schools. The California Tax Credit Allocation Committee shall have responsibility for the administration of this program as provided in this section and Section 23622.9.

(b) (1) For taxable years beginning on or after January 1, 2013, and before January 1, 2020, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount determined in accordance with Section 45D of the Internal Revenue Code, as modified as set forth in this section.

(2) This credit shall be allowed only if the taxpayer holds the qualified equity investment on the credit allowance date and each of the six following anniversary dates of that date.

(c) Section 45D of the Internal Revenue Code is modified as follows:

(1) (A) The references to "the Secretary" in Section 45D of the Internal Revenue Code are modified to read "the committee."

(B) For purposes of this section, "committee" means the California Tax Credit Allocation Committee as described in subdivision (a) of Section 50199.7 of the Health and Safety Code, or any successor thereto.

(2) Section 45D(a)(2) of the Internal Revenue Code is modified by substituting for "(A) 5 percent with respect to the first 3 credit allowance dates, and (B) 6 percent with respect to the remainder of the credit allowance dates." with the following:

(A) Zero percent with respect to the first two credit allowance dates.

(B) Seven percent with respect to the third credit allowance date.

(C) Eight percent with respect to the remainder of the credit allowance dates.

(3) The provisions of Section 45D(b) of the Internal Revenue Code is modified as follows:

(A) Section 45D(b)(1) of the Internal Revenue Code is modified by substituting "1 year" for "5 years" and "1-year period" for "5-year period."

(B) Section 45D(b)(3) of the Internal Revenue Code is modified by substituting "qualified low-income community investments in California" for "qualified low-income community investments."

(4) Section 45D(d)(1)(A) of the Internal Revenue Code, relating to qualified low-income community investments, is modified to include any capital or equity investment in, or loan to, any real estate project *located in a low-income community* or any operating business that, at the time the initial investment is made, has 250 or less employees and is located in a low-income community. The *real estate project or* operating business shall meet all other conditions of a qualified active low-income *community* business, except as modified by paragraphs (5) and (6).

(5) The term "qualified active low-income community business," as defined in Section 45D(d)(2) of the Internal Revenue Code is modified as follows:

(A) Section 45D(d)(2)(A)(i) of the Internal Revenue Code is modified by substituting "any low-income community in California" for "any low-income community."

(B) Section 45D(d)(2)(A)(ii) of the Internal Revenue Code is modified by substituting "any low-income community in ~~California. 'Substantial portion' shall be defined as 40 percent or more of the tangible property of the entity" for "any low-income community."~~ *California."*

(C) Section 45D(d)(2)(A)(iii) of the Internal Revenue Code shall not apply.

(D) The following shall apply in lieu of the provisions of Section 45D(d)(2)(C) of the Internal Revenue Code, relating to qualified active low-income community business: "A 'qualified active low-income community business' shall include an operating business that, at the time the initial investment is made, has 250 or less employees and is located in a low-income community. The operating business shall meet all other conditions of a qualified active low-income business, except as modified by this paragraph and paragraph (6)."

(6) Section 45D(e)(1) of the Internal Revenue Code is modified to add the following: When the United States Census Bureau discontinues using the decennial census to report median family income on a census tract basis, census block group data shall be used based on the American Community Survey.

(7) The following shall apply in lieu of the provisions of Section ~~45(D)(f)(1)~~ *45D(f)(1)* of the Internal Revenue Code, relating to national limitation on amount of investments designated: "The aggregate amount of credit that may be ~~allowed~~ *allocated* in any calendar year pursuant to this section and Section 23622.9 shall be forty million dollars ($40,000,000). The committee shall limit the allocation of credits permitted under this section and Section 23622.9 to a cumulative total of no more than two hundred million dollars ($200,000,000)."

(8) Section 45D(g)(3) of the Internal Revenue Code, relating to recapture event, is modified by adding the following: "Notwithstanding the provisions of this paragraph, a recapture event shall not have occurred and an investment shall be considered held by a community development entity upon its sale or repayment, provided the qualified community development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of that capital. A qualified community development entity shall not be required to reinvest capital returned from a qualified low-income community investment after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment shall be considered held by the qualified community development entity through the seventh anniversary of the issuance of the qualified equity investment."

(9) Section 45D(i) of the Internal Revenue Code, relating to regulations, shall not apply.

(d) (1) The committee shall adopt guidelines necessary or appropriate to carry out the purposes of this section. The guidelines shall not disqualify a low-income community investment for the single reason that public or private incentives, loans, equity investments, technical assistance, or other forms of support have been or continue to be provided. The adoption of the guidelines shall not be subject to the rulemaking provisions of the Administrative Procedure Act of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The committee shall establish and impose reasonable fees upon entities that apply for the allocation pursuant to subdivision (d) and use the revenue to defray the cost of administering the program. The committee shall establish the fees in a manner that ensures that (A) the total amount collected equals the amount reasonably necessary to defray the ~~commission's~~ *committee's* costs in performing its administrative duties under this section, and (B) the amount paid by each entity reasonably corresponds with the value of the services provided to the entity.

(3) In developing guidelines the committee shall adopt an allocation process that does all of the following:

(A) Creates an equitable distribution process that ensures that low-income communities across the state have an opportunity to benefit from the program.

(B) Sets minimum organizational capacity standards that applicants must meet in order to receive an allocation of credits.

(C) Requires annual reporting by each community development ~~organization~~ *entity* that receives an allocation. The report shall include, but is not limited to, the impact the credit had on the low-income community, the amount of moneys used, and the types of activities funded through the equity investment. The reporting period shall be for a period of eight years following the allocation of credits.

(D) Provides for an annual return of unused credits so that they may be reallocated to other community development entities.

(E) Requires the committee to annually reserve the following:

(i) At least 15 percent of the tax credits for community development entities that target businesses located in low-income communities facing disproportionate environmental pollution.

(ii) At least 15 percent of the tax credits for community development entities that target rural areas, including businesses providing equipment or supplies to agricultural producers, packers, handlers, and processors.

(iii) At least 20 percent of the tax credits for community development entities that target businesses in inner-city areas.

(4) The committee shall annually report on its Internet Web site the information provided by low-income community development entities and on the geographic distribution of the credits.

(e) This section shall remain in effect only until December 1, 2020, and as of that date is repealed.

SEC. 5.

Section 23622.9 is added to the Revenue and Taxation Code, to read:

23622.9.

(a) There is hereby created the California New Markets Tax Credit Program as provided in this section and Section 17053.9. The purpose of this program is to stimulate economic development, and hasten California's economic recovery, by authorizing tax credits for investment in California, including, but not limited to, retail businesses, real property, financial institutions, and schools. The California Tax Credit Allocation Committee shall have responsibility for the administration of this program as provided in this section and Section 17053.9.

(b) (1) For taxable years beginning on or after January 1, 2013, and before January 1, 2020, there shall be allowed as a credit against the "tax," as defined in Section 23036, an amount determined in accordance with Section 45D of the Internal Revenue Code, as modified as set forth in this section.

(2) This credit shall be allowed only if the taxpayer holds the qualified equity investment on the credit allowance date and each of the six following anniversary dates of that date.

(c) Section 45D of the Internal Revenue Code is modified as follows:

(1) (A) The references to "the Secretary" in Section 45D of the Internal Revenue Code are modified to read "the committee."

(B) For purposes of this section, "committee" means the California Tax Credit Allocation Committee as described in subdivision (a) of Section 50199.7 of the Health and Safety Code, or any successor thereto.

(2) Section 45D(a)(2) of the Internal Revenue Code is modified by substituting for "(A) 5 percent with respect to the first 3 credit allowance dates, and (B) 6 percent with respect to the remainder of the credit allowance dates." with the following:

(A) Zero percent with respect to the first two credit allowance dates.

(B) Seven percent with respect to the third credit allowance date.

(C) Eight percent with respect to the remainder of the credit allowance dates.

(3) The provisions of Section 45D(b) of the Internal Revenue Code is modified as follows:

(A) Section 45D(b)(1) of the Internal Revenue Code is modified by substituting "1 year" for "5 years" and "1-year period" for "5-year period."

(B) Section 45D(b)(3) of the Internal Revenue Code is modified by substituting "qualified low-income community investments in California" for "qualified low-income community investments."

(4) Section 45D(d)(1)(A) of the Internal Revenue Code, relating to qualified low-income community investments, is modified to include any capital or equity investment in, or loan to, any real estate project *located in a low-income community* or any operating business that, at the time the initial investment is made, has 250 or less employees and is located in a low-income community. The *real estate project or* operating business shall meet all other conditions of a qualified active low-income *community* business, except as modified by paragraphs (5) and (6).

(5) The term "qualified active low-income community business," as defined in Section 45D(d)(2) of the Internal Revenue Code is modified as follows:

(A) Section 45D(d)(2)(A)(i) of the Internal Revenue Code is modified by substituting "any low-income community in California" for "any low-income community."

(B) Section 45D(d)(2)(A)(ii) of the Internal Revenue Code is modified by substituting "any low-income community in ~~California. 'Substantial portion' shall be defined as 40 percent or more of the tangible property of the entity" for "any low-income community."~~ *California."*

(C) Section 45D(d)(2)(A)(iii) of the Internal Revenue Code shall not apply.

(D) The following shall apply in lieu of the provisions of Section 45D(d)(2)(C) of the Internal Revenue Code, relating to qualified active low-income community business: "A 'qualified active low-income community business' shall include an operating business that, at the time the initial investment is made, has 250 or less employees and is located in a low-income community. The operating business shall meet all other conditions of a qualified active low-income business, except as modified by this paragraph and paragraph (6)."

(6) Section 45D(e)(1) of the Internal Revenue Code is modified to add the following: When the United States Census Bureau discontinues using the decennial census to report median family income on a census tract basis, census block group data shall be used based on the American Community Survey.

(7) The following shall apply in lieu of the provisions of Section 45(D)(f)(1) of the Internal Revenue Code, relating to national limitation on amount of investments designated: "The aggregate amount of credit that may be ~~allowed~~ *allocated* in any calendar year pursuant to this section and Section 17053.9 shall be forty million dollars ($40,000,000). The committee shall

limit the allocation of credits permitted under this section and Section 17053.9 to a cumulative total of no more than two hundred million dollars ($200,000,000).”

(8) Section 45D(g)(3) of the Internal Revenue Code, relating to recapture event, is modified by adding the following: “Notwithstanding the provisions of this paragraph, a recapture event shall not have occurred and an investment shall be considered held by a community development entity upon its sale or repayment, provided the qualified community development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of that capital. A qualified community development entity shall not be required to reinvest capital returned from a qualified low-income community investment after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment shall be considered held by the qualified community development entity through the seventh anniversary of the issuance of the qualified equity investment.”

(9) Section 45D(i) of the Internal Revenue Code, relating to regulations, shall not apply.

(d) (1) The committee shall adopt guidelines necessary or appropriate to carry out the purposes of this section. The guidelines shall not disqualify a low-income community investment for the single reason that public or private incentives, loans, equity investments, technical assistance, or other forms of support have been or continue to be provided. The adoption of the guidelines shall not be subject to the rulemaking provisions of the Administrative Procedure Act of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The committee shall establish and impose reasonable fees upon entities that apply for the allocation pursuant to subdivision (d) and use the revenue to defray the cost of administering the program. The committee shall establish the fees in a manner that ensures that (A) the total amount collected equals the amount reasonably necessary to defray the ~~commission's~~ *committee's* costs in performing its administrative duties under this section, and (B) the amount paid by each entity reasonably corresponds with the value of the services provided to the entity.

(3) In developing guidelines the committee shall adopt an allocation process that does all of the following:

(A) Creates an equitable distribution process that ensures that low-income communities across the state have an opportunity to benefit from the program.

(B) Sets minimum organizational capacity standards that applicants must meet in order to receive an allocation of credits.

(C) Requires annual reporting by each community development ~~organization~~ *entity* that receives an allocation. The report shall include, but is not limited to, the impact the credit had on the low-income community, the amount of moneys used, and the types of activities funded through the equity investment. The reporting period shall be for a period of eight years following the allocation of credits.

(D) Provides for an annual return of unused credits so that they may be reallocated to other community development entities.

(E) Requires the committee to annually reserve the following:

(i) At least 15 percent of the tax credits for community development entities that target businesses located in low-income communities facing disproportionate environmental pollution.

(ii) At least 15 percent of the tax credits for community development entities that target rural areas, including businesses providing equipment or supplies to agricultural producers, packers, handlers, and processors.

(iii) At least 20 percent of the tax credits for community development entities that target businesses in inner-city areas.

(4) The committee shall annually report on its Internet Web site the information provided by low-income community development entities and on the geographic distribution of the credits.

(e) This section shall remain in effect only until December 1, 2020, and as of that date is repealed.

SEC. 6.

Section 23623 of the Revenue and Taxation Code, as added by Section 8 of Chapter 10 of the Third Extraordinary Session of the Statutes of 2009, is repealed.

SEC. 7.

Section 23623 of the Revenue and Taxation Code, as added by Section 8 of Chapter 17 of the Third Extraordinary Session of the Statutes of 2009, is amended to read:

23623.

(a) For each taxable year beginning on or after January 1, 2009, there shall be allowed as a credit against the "tax," as defined in Section 23036, three thousand dollars ($3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.

(b) For purposes of this section:

(1) "Acquired" includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(2) "Qualified full-time employee" means:

(A) A qualified employee who was paid qualified wages during the taxable year by the qualified employer for services of not less than an average of 35 hours per week.

(B) A qualified employee who was a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified employer.

(3) A “qualified employee” shall not include any of the following:

(A) An employee certified as a qualified employee in an enterprise zone designated in accordance with Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(B) An employee certified as a qualified disadvantaged individual in a manufacturing enhancement area designated in accordance with Section 7073.8 of the Government Code.

(C) An employee certified as a qualified employee in a targeted tax area designated in accordance with Section 7097 of the Government Code.

(D) An employee certified as a qualified disadvantaged individual or a qualified displaced employee in a local agency military base recovery area (LAMBRA) designated in accordance with Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code.

(E) An employee whose wages are included in calculating any other credit allowed under this part.

(4) “Qualified employer” means a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.

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

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

(A) In the case of a full-time employee paid hourly qualified wages, “annual full-time equivalent” means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.

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

(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:

(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B).

(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.

(C) The total number of full-time employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.

(2) For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.

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

(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.

(f) For purposes of this section:

(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.

(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (g) of Section 24416.20, without application of paragraph (7) of that subdivision, shall apply.

(g) (1) (A) Credit under this section and Section 17053.80 shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the ~~cutoff~~ *cut-off* date established by the Franchise Tax Board.

(B) For purposes of this paragraph, the ~~cutoff~~ *cut-off* date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 17053.80 that cumulatively total two hundred million dollars ($200,000,000) for all taxable years.

(2) The date a return is received shall be determined by the Franchise Tax Board.

(3) (A) The determinations of the Franchise Tax Board with respect to the ~~cutoff~~ *cut-off* date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding.

(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.

(4) The Franchise Tax Board shall periodically provide notice on its Internet Web site with respect to the amount of credit under this section and Section 17053.80 claimed on timely filed original returns received by the Franchise Tax Board.

(h) (1) The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the limitation on total credits allowable under this section and Section 17053.80 and guidelines

necessary to avoid the application of paragraph (2) of subdivision (f) through ~~splitups,~~ *split-ups,* shell corporations, partnerships, tiered ownership structures, or otherwise.

(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.

(i) This section shall remain in effect only until December 1 of the calendar year after the year of the ~~cutoff~~ *cut-off* date, and as of that December 1 is repealed.

SEC. 8.

Notwithstanding Section 50199.9 of the Health and Safety Code, or any other law, the sum of one hundred fifty thousand dollars ($150,000) is hereby appropriated from the Tax Credit Allocation Fee Account to the California Tax Credit Allocation Committee for purposes of implementing the California New Markets Tax Credit Program as provided in Sections 17053.9 and 23622.9 of the Revenue and Taxation Code. The appropriated funds shall remain in the Tax Credit Allocation Fee Account until such time as the funds are required for purposes of implementing this new program, and shall be available for expenditure only until January 1, 2020. It is the intent of the Legislature that these appropriated funds shall be reimbursed by the application fees collected by the committee for this new program.

SEC. 9.

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