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Senate Bill No. 1447

CHAPTER 41

An act to add Sections 6902.7 and 6902.8 to, and to add and repeal Sections 17053.72 and 23627 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 09, 2020. Filed with Secretary of State September 09, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1447, Bradford. Income tax: sales and use tax: credit: small business.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws. The Sales and Use Tax Law, in lieu of specified credits allowed under the Personal Income Tax Law and the Corporation Tax Law, allows a qualified taxpayer or affiliate to make an irrevocable election to apply that income tax credit amount against qualified sales and use taxes imposed on the qualified taxpayer in the reporting periods in the 5 years following the reporting period for which the claimant was required to file its most recent sales and use tax return, as specified.

Existing law requires any bill authorizing a new tax expenditure to contain, among other things, specific goals, purposes, and objectives the tax expenditure will achieve, detailed performance indicators, and data collection requirements.

This bill would allow a credit against the personal income and corporate income taxes for each taxable year beginning on or after January 1, 2020, and before January 1, 2021, to a qualified small business employer that receives a tentative credit reservation, in an amount equal to $1,000 for each net increase in qualified employees, not to exceed one $100,000 for any qualified small business employer. The bill would authorize a qualified small business employer that received a tentative credit reservation to irrevocably elect to apply the credit against qualified sales and use taxes imposed on the qualified small business employer in reporting periods commencing on January 1, 2021, and until April 30, 2026, as specified. The bill would require a qualified small business employer to submit an application to the California Department of Tax and Fee Administration for a tentative credit reservation under these provisions that includes, among other things, whether the qualified small business employer is making the irrevocable election, and would require the department to allocate the credit reservations on a first-come, first-served basis, not to cumulatively exceed $100,000,000.

This bill would create the Small Business Hiring Credit Fund in the State Treasury for the sole purpose of applying the credits allowed by the bill against qualified sales and use taxes and would require any unused money remaining in the fund to be transferred to the General Fund by June 1, 2026.

This bill would also include additional information required for any bill authorizing a new tax expenditure.

This bill would take effect immediately as a tax levy.

Vote Required: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: NO Immediate Effect YES Urgency: NO Tax Levy: YES Election: NO Usual Current Expenses: NO Budget Bill: NO Prop 25 Trailer Bill: NO

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

SECTION 1. Section 6902.7 is added to the Revenue and Taxation Code, to read:

6902.7. (a) For purposes of this section:

(1) "Qualified small business employer" means a person that is a qualified small business employer within the meaning of paragraph (3) of subdivision (b) of Section 17053.72 or paragraph (3) of subdivision (b) of Section 23627.

(2) "Credit amount" means an amount equal to the credit amount that would otherwise be allowed to a qualified small business employer pursuant to Section 17053.72 or 23627, but for the irrevocable election made pursuant to Section 6902.8.

(3) "Qualified sales or use taxes" means any sales and use taxes imposed by Part 1 (commencing with Section 6001) and Section 35 of Article XIII of the California Constitution, local sales and use taxes imposed in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), and local transactions and use taxes imposed in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(b) The department shall allow a qualified small business employer that received a tentative credit reservation pursuant to Section 6902.8 and that made an irrevocable election pursuant to Section 6902.8 to apply the small business hiring credit amount against qualified sales and use taxes imposed on the qualified small business employer, as follows:

(1) For monthly filers, the credit shall apply to amounts due and payable for the month commencing on March 1, 2021, ending on March 31, 2021, and due April 30, 2021.

(2) For quarterly filers, the credit shall apply to amounts due and payable for the quarter commencing on January 1, 2021, ending on March 31, 2021, and due April 30, 2021.

(3) For annual filers, fiscal year filers, or a qualified small business owner on any other reporting basis, the credit shall apply to amounts due and payable on the first return due on or after April 30, 2021.

(c) Any excess credit shall be carried over and shall not be refunded, as follows:

(1) In the case where the credit amount exceeds the sales and use taxes due and payable as described in subdivision (b), the department shall apply the excess credit against amounts due and payable for periods following those described in subdivision (b) on returns due and filed on or before April 30, 2026.

(2) Any remaining excess credit amount after April 30, 2026, shall not be refunded and shall be forfeited.

(d) No interest shall be paid on any amount credited pursuant to subdivisions (b) or (c).

(e) Section 6961 shall apply to any credit, or part thereof, that is erroneously allowed pursuant to this section.

(f) Notwithstanding Section 7056, the department shall provide information to the Franchise Tax Board, in a form and manner agreed upon by the department and the Franchise Tax Board, regarding the qualified small business employers that have been assigned a credit allowed under Sections 17053.72 and 23627, and have made an irrevocable election pursuant to Section 6902.8, and the credit amount claimed by each qualified small business employer.

(g) The department may prescribe, adopt, and enforce any emergency regulations as necessary to implement, administer, and enforce its duties under this section. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding any other law, the emergency regulations adopted by the department may remain in effect for two years from adoption.

(h) The Small Business Hiring Credit Fund is hereby created in the State Treasury for the sole purpose of applying the small business hiring credits allowed by this section. Any unused money remaining in the fund shall be transferred to the General Fund by June 1, 2026.

SEC. 2. Section 6902.8 is added to the Revenue and Taxation Code, to read:

6902.8. (a) Unless the context otherwise requires, the definitions set forth in Sections 17053.72 and 23627 govern the construction of this section.

(b) A qualified small business employer shall submit an application to the department in a form and manner prescribed by the department for a tentative credit reservation amount for the small business hiring tax credit allowed to a qualified small business employer pursuant to Section 17053.72 or 23627, or both.

(c) The application shall include the following:

(1) The net increase in qualified employees, as determined in subdivision (c) of Section 17053.72 or subdivision (c) of Section 23627.

(2) (A) Whether the credit will be applied under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), or both.

(B) Whether the qualified small business employer makes an irrevocable election to apply the credit against qualified sales and use taxes pursuant to Section 6902.7 in lieu of claiming the credit allowed by Section 17053.72 or 23627. The election shall not be amended.

(3) Any other information as deemed necessary by the department.

(d) (1) Qualified small business employers shall submit, and the department shall accept, applications for tentative credit reservation amounts during the period beginning December 1, 2020, and ending January 15, 2021, or any earlier date determined by the department when the maximum cumulative total allocation limit in subdivision (e) is reached.

(2) Applications shall not be accepted by the department after January 15, 2021, or any other date determined by the department.

(3) The date and time an application is received shall be determined by the department. The determination of the department with respect to the date and time an application is received may not be reviewed in any administrative or judicial proceeding.

(e) (1) The aggregate amount of credit that may be allocated pursuant to Sections 6902.7, 17053.72, and 23627 shall not exceed the cumulative total of one hundred million dollars ($100,000,000).

(2) The department shall allocate a tentative credit reservation to qualified small business employers on a first-come, first-served basis. For each application received, the total amount of credit available for allocation shall be reduced by an amount equal to the allocated tentative credit reservation amount.

(3) The tentative credit reservation amount shall be equal to the net increase in qualified employees as reported on the application multiplied by one thousand dollars ($1,000) and shall not exceed one hundred thousand dollars ($100,000) per qualified small business employer.

(4) The department shall promptly, no more than 30 days after the application is received, notify the applicant of the tentative credit reservation amount. The amount allocated shall not constitute a determination by the department with respect to any of the requirements of this section or eligibility for the credit authorized by Section 6902.7, 17053.72, or 23627.

(5) The department shall periodically provide on its website the aggregate allocated tentative credit reservation amount under Sections 6902.7, 17053.72, and 23627, and remaining credit amount available for allocation.

(f) Notwithstanding Section 7056, the department shall provide the Franchise Tax Board, in the form and manner agreed upon by the department and the Franchise Tax Board, any and all information provided by each applicant pursuant to subdivision (c) and any other information deemed necessary by the department and the Franchise Tax Board to administer and enforce this section, and Sections 17053.72 and 23267.

(g) The department may prescribe, adopt, and enforce any emergency regulations as necessary to implement, administer, and enforce its duties under this section. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding any other law, the emergency regulations adopted by the department may remain in effect for two years from adoption.

SEC. 3. Section 17053.72 is added to the Revenue and Taxation Code, to read:

17053.72. (a) For each taxable year beginning on or after January 1, 2020, and before January 1, 2021, there shall be allowed as a small business hiring credit against the "net tax," as defined in Section 17039, to a qualified small business employer that receives a tentative credit reservation under Section 6902.8, an amount equal to one thousand dollars ($1,000) for each net increase in qualified employees, as specified in subdivision (c). The credit shall not exceed one hundred thousand dollars ($100,000) for any qualified small business employer.

(b) For purposes of this section:

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

(A) In the case of a qualified employee paid hourly qualified wages, "monthly full-time equivalent" means the total number of hours worked per month for the qualified small business employer by the qualified employee, not to exceed 167 hours per month per qualified

employee, divided by 167.

(B) In the case of a salaried qualified employee, "monthly full-time equivalent" means the total number of weeks worked per month for the qualified small business employer by the qualified employee divided by 4.33 multiplied by the time base the qualified employee worked.

(2) (A) "Qualified employee" means an employee who is paid qualified wages by a qualified small business employer.

(B) "Qualified employee" shall not include an employee whose wages are included in calculating any other credit allowed under this part.

(3) (A) "Qualified small business employer" means a taxpayer that meets both of the following requirements:

(i) As of December 31, 2019, employed a total of 100 or fewer employees.

(ii) Has a 50-percent decrease in gross receipts determined by comparing gross receipts for the three-month period beginning on April 1, 2020, and ending June 30, 2020, with the gross receipts for the three-month period beginning on April 1, 2019, and ending June 30, 2019, if it would have met the requirement of having a significant decline in gross receipts for that quarter as determined under Section 2301(c)(2)(B)(i) of Public Law 116-136.

(B) "Qualified small business employer" does not include a taxpayer required to be included in a combined report under Section 25101 or 25110, or authorized to be included in a combined report under Section 25101.15.

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

(5) "Time base" means the fraction of full-time employment that the qualified employee works.

(c) The net increase in qualified employees of a qualified small business employer shall be determined by subtracting the amount determined in paragraph (1) from the amount determined in paragraph (2).

(1) The average monthly full-time equivalent qualified employees employed during the three-month period beginning April 1, 2020 and ending June 30, 2020, by the qualified small business employer. The average monthly full-time equivalent qualified employees is determined by adding the total monthly full-time equivalent qualified employees employed by the qualified small business employer for all three months and dividing the total by three.

(2) The average monthly full-time equivalent qualified employees employed during the five-month period beginning July 1, 2020 and ending November 30, 2020, by the qualified small business employer. The average monthly full-time equivalent qualified employees is determined by adding the total monthly full-time equivalent qualified employees employed by the qualified small business employer for all five months and dividing the total by five.

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

(e) Any deduction otherwise allowed under this part for qualified wages shall be reduced by the amount of the credit allowed under this section.

(f) For purposes of this section, 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 small business employer.

(g) (1) A credit under this section or Section 23627 shall be allowed only for credits claimed on timely filed original returns.

(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 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 or the application of the limitation specified in Section 6902.8 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.

(h) (1) The Franchise Tax Board may prescribe any regulations necessary or appropriate to carry out the purposes of this section.

(2) The Franchise Tax Board may prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any regulation, rule, guideline, procedure, or other guidance prescribed by the Franchise Tax Board pursuant to this section.

(i) Notwithstanding Section 19542, the Franchise Tax Board may provide to the California Department of Tax and Fee Administration

information related to the credit allowed by Section 6902.7, this section, and Section 23627, including, but not limited to, the qualified small business employer names, amounts of tax credits allowed under each section, and the net increase in qualified employees.

(j) This section shall remain in effect only until December 1, 2021, and as of that date is repealed.

SEC. 4. Section 23627 is added to the Revenue and Taxation Code, to read:

23627. (a) For each taxable year beginning on or after January 1, 2020, and before January 1, 2021, there shall be allowed as a small business hiring credit against the "tax," as defined in Section 23036, to a qualified small business employer that receives a tentative credit reservation under Section 6902.8, an amount equal to one thousand dollars ($1,000) for each net increase in qualified employees, as specified in subdivision (c). The credit shall not exceed one hundred thousand dollars ($100,000) for any qualified small business employer.

(b) For purposes of this section:

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

(A) In the case of a qualified employee paid hourly qualified wages, "monthly full-time equivalent" means the total number of hours worked per month for the qualified small business employer by the qualified employee, not to exceed 167 hours per month per qualified employee, divided by 167.

(B) In the case of a salaried qualified employee, "monthly full-time equivalent" means the total number of weeks worked per month for the qualified small business employer by the qualified employee divided by 4.33 multiplied by the time base the qualified employee worked.

(2) (A) "Qualified employee" means an employee who is paid qualified wages by a qualified small business employer.

(B) "Qualified employee" shall not include an employee whose wages are included in calculating any other credit allowed under this part.

(3) (A) "Qualified small business employer" means a taxpayer that meets both of the following requirements:

(i) As of December 31, 2019, employed a total of 100 or fewer employees.

(ii) Has a 50-percent decrease in gross receipts determined by comparing gross receipts for the three-month period beginning on April 1, 2020, and ending June 30, 2020, with the gross receipts for the three-month period beginning on April 1, 2019, and ending June 30, 2019, if it would have met the requirement of having a significant decline in gross receipts for that quarter as determined under Section 2301(c)(2)(B)(i) of Public Law 116-136.

(B) "Qualified small business employer" does not include a taxpayer required to be included in a combined report under Section 25101 or 25110, or authorized to be included in a combined report under Section 25101.15.

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

(5) "Time base" means the fraction of full-time employment that the qualified employee works.

(c) The net increase in qualified employees of a qualified small business employer shall be determined by subtracting the amount determined in paragraph (1) from the amount determined in paragraph (2).

(1) The average monthly full-time equivalent qualified employees employed during the three-month period beginning April 1, 2020 and ending June 30, 2020, by the qualified small business employer. The average monthly full-time equivalent qualified employees is determined by adding the total monthly full-time equivalent qualified employees employed by the qualified small business employer for all three months and dividing the total by three.

(2) The average monthly full-time equivalent qualified employees employed during the five-month period beginning July 1, 2020 and ending November 30, 2020, by the qualified small business employer. The average monthly full-time equivalent qualified employees is determined by adding the total monthly full-time equivalent qualified employees employed by the qualified small business employer for all five months and dividing the total by five.

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

(e) Any deduction otherwise allowed under this part for qualified wages shall be reduced by the amount of the credit allowed under this section.

(f) For purposes of this section, 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 small business employer.

(g) (1) A credit under this section or Section 17053.72 shall be allowed only for credits claimed on timely filed original returns.

(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 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 or the application of the limitation specified in Section 6902.8 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.

(h) (1) The Franchise Tax Board may prescribe any regulations necessary or appropriate to carry out the purposes of this section.

(2) The Franchise Tax Board may prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any regulation, rule, guideline, procedure, or other guidance prescribed by the Franchise Tax Board pursuant to this section.

(i) Notwithstanding Section 19542, the Franchise Tax Board may provide to the California Department of Tax and Fee Administration information related to the credit allowed by Section 6902.7, Section 17053.72, and this section, including, but not limited to, the qualified small business employer names, amounts of tax credits allowed under each section, and the net increase in qualified employees.

(j) This section shall remain in effect only until December 1, 2021, and as of that date is repealed.

SEC. 5. (a) In accordance with Section 41 of the Revenue and Taxation Code, the purpose of the small business hiring credits in Sections 6902.7, 17053.72, and 23627 of the Revenue and Taxation Code, as added by this act, is to provide financial relief for the economic disruptions resulting from COVID-19 that have resulted in unprecedented job losses.

(b) To measure whether the credits achieve their intended purpose, the following performance indicators shall be used:

(1) The number of applications received for tentative credit reservation.

(2) The net increase in number of qualified employees represented on applications for tentative credit reservation.

(3) The average credit amount on tax returns claiming the credit.

(c) (1) By April 1, 2022, or earlier if data is available, the Franchise Tax Board shall report to the Legislature the information under subdivision (b) for credits claimed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code pursuant to Section 17053.72 or 23627 of the Revenue and Taxation Code, respectively, and the California Department of Tax and Fee Administration shall report to the Legislature for credits claimed under Section 6902.7 of the Revenue and Taxation Code.

(2) A report submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect.

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