

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Steinberg, et al. Analyst: Jahna Alvarado Bill Number: SB 974  
Related Bills: See Legislative History Telephone: 845-5683 Amended Dates: April 5, 2010, and May 3, 2010  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Career Pathways Investment Credit/ Enterprise Zone Employer Hiring Credit/Ex-Offender

### SUMMARY

This bill would do the following:

- Establish the career pathways investment credit, as specified;
- Modify the enterprise zone (EZ) hiring credit for taxpayers subject to the Personal Income Tax Law (PITL); and
- Modify the targeted tax area (TTA) hiring credit for taxpayers subject to the Corporate Tax Law (CTL).

This bill would also make changes to the Education Code and the sales and use tax provisions of the Revenue and Taxation Code. The discussion of these changes is limited to the changes that would impact the department.

### SUMMARY OF AMENDMENTS

The May 3, 2010, amendments added several coauthors, made changes to the provisions of the Education Code relating to the career pathways investment credit ceiling, and, under the Revenue and Taxation Code, modified the calculation of the maximum annual amount of the credit that may be allocated under the provisions of the Education Code. The May 3, 2010, amendments also, for purposes of the EZ hiring credit under the PITL and the TTA hiring credit under the CTL, modified the definition of "qualified employee," and added a requirement that certification of an individual as a "qualified employee" must be obtained within 21 days of the individual's initial date of employment. All other provisions in the bill as amended May 3, 2010, are the same as those in the bill as amended on April 5, 2010.

This is the department's first analysis of the bill.

### PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to reduce the secondary school dropout rate and spur future job growth in the State by encouraging investment in career education programs.

Board Position:	Department Director	Date
<input type="checkbox"/> S		
<input type="checkbox"/> SA		
<input type="checkbox"/> N		
<input type="checkbox"/> NA		
<input type="checkbox"/> O		
<input type="checkbox"/> OUA		
<input type="checkbox"/> NP		
<input type="checkbox"/> NAR		
<input checked="" type="checkbox"/> PENDING	Selvi Stanislaus	05/10/10

## **EFFECTIVE/OPERATIVE DATE**

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2011.

## **POSITION**

Pending.

## **Summary of Suggested Amendments**

Amendments are provided to resolve the technical concerns discussed below.

## **ANALYSIS**

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

### FEDERAL/STATE LAW

Current federal and state laws do not provide a comparable credit for investing in career pathways programs.

Under the Government Code, state law provides for several types of geographically targeted economic development areas (G-TEDAs): EZs, Manufacturing Enhancement Areas (MEAs), TTAs, and Local Agency Military Base Recovery Areas (LAMBRAs).

Under the Revenue and Taxation Code, existing state law provides special tax incentives for taxpayers conducting business activities within a G-TEDA. These incentives include a hiring credit, sales or use tax credit, business expense deduction, and special net operating loss treatment. Two additional incentives include net interest deduction for businesses that make loans to businesses within G-TEDAs and a tax credit for employees working in an EZ.

**Hiring Credit:** A business located in a G-TEDA is eligible for a hiring credit equal to a percentage of wages paid to qualified employees. A qualified employee must be hired after the area is designated as a G-TEDA and meet certain other criteria. At least 90 percent of the qualified employee's work must be directly related to a trade or business located in the G-TEDA and at least 50 percent of the employee's services must be performed inside the G-TEDA.

The credit is based on the lesser of the actual hourly wage paid or 150 percent of the current minimum hourly wage (under special circumstances for the Long Beach EZ, the maximum is 202 percent of the minimum wage). The amount of the credit must be reduced by any other federal or state jobs tax credits, and the taxpayer's deduction for ordinary and necessary trade or business expenses must be reduced by the amount of the hiring credit.

Current state law allows the assignment of certain credits under the Corporation Tax Law to taxpayers that are members of a combined reporting group. The rules for assigning credits are included below:

- An “eligible credit” may be assigned by a taxpayer to an “eligible assignee.”
- “Eligible credit” means any credit earned by a taxpayer in a taxable year beginning on or after July 1, 2008, or any credit earned in any taxable year beginning before July 1, 2008, that is eligible to be carried forward to the taxpayer’s first taxable year beginning on or after July 1, 2008.
- “Eligible assignee” means any “affiliated corporation” that is properly treated as a member of the same combined reporting group.<sup>1</sup>
- “Affiliated corporation” means a corporation that is a member of a commonly controlled group.
- The election to assign any credit is irrevocable once made and is required to be made on the taxpayer’s original return for the taxable year in which the assignment is made.

#### THIS BILL

This bill would allow a qualified taxpayer, as defined, a franchise or income tax credit in an amount equal to the amount that is allocated and certified by the State Department of Education (DOE) for support for career exploration activities, curriculum and professional development programs, and middle school or high school programs that create career pathways, as defined. The allocated credit would be applied for each of five taxable years as provided for in the certification. No credit would be allowed unless or until the certification is attached to an unspecified document. Any credit unused in a taxable year because it is in excess of the taxpayer’s tax liability could be carried over until exhausted.

A qualified taxpayer may, in lieu of claiming a credit against their franchise or income tax, make an irrevocable election to apply the credit amount against the sales and use tax paid by the qualified taxpayer.

This bill provides that the aggregate amount of credits that may be allocated by the DOE in any fiscal year would be equal to the sum of the following:

- \$16 million in credits for the 2010/11 fiscal year, \$65 million in credits for the 2011/12 fiscal year, \$95 million in credits for the 2012/13 fiscal year (the baseline amount), and the baseline amount as adjusted for inflation or deflation as measured by the Consumer Price Index for each fiscal year thereafter; and
- The unused credit allocation amount, if any, for the preceding fiscal year.

In the event that a qualified taxpayer fails to comply with the requirements set forth in this bill, the credit would be disallowed, and assessed and collected until the requirements are satisfied. A disallowed credit would be treated as a math error.

Under the Education Code, this bill would define a number of terms and phrases including: “authentic application,” “career pathways investment credit ceiling,” “department,” “middle school or high school programs that create career pathways,” and “qualified taxpayer.”

This bill would modify the EZ hiring credit under the PITL and the TTA hiring credit under the CTL as follows:

- Redefine the term “ex-offender;”
- Replace obsolete references to state and federal programs with current references;
- Eliminate “resident of a targeted employment area” from the definition of “qualified employee;”
- Add a requirement that an application for certification as a “qualified employee” shall be submitted and obtained within 21 days of the employee’s first day of work for the qualified taxpayer; and
- Make several technical, non-substantive changes.

#### IMPLEMENTATION CONSIDERATIONS

Department staff have identified the following implementation concerns impacting the department. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

The definitions of the term “qualified taxpayer” under the Education Code and the Revenue and Taxation Code are inconsistent. Additionally, it is unclear whether an owner of a pass through entity would be a “qualified taxpayer.” It is recommended that this bill be amended to provide a consistent definition of “qualified taxpayer” that clearly identifies the taxpayers that would be eligible for this credit.

This bill would disallow the credit for noncompliance by the qualified taxpayer. This bill fails to specify who would measure and record whether the qualified taxpayer is compliant (i.e., Board of Equalization (BOE), DOE, and/or Franchise Tax Board (FTB)). Further, it is unclear how the department or qualified taxpayer would be notified of the noncompliance after the DOE has provided certification of the credit. It is recommended that this bill be amended for clarity and ease of administration.

This bill uses the undefined term “collection” and the undefined phrase “requirements are satisfied.” The absence of definitions to clarify this term and phrase could lead to disputes with taxpayers and could complicate the administration of this credit.

The bill lacks administrative details that must be determined to implement the bill and determine its impacts to the department’s systems, forms, and processes. For example: What must the certificate be attached to? How would a qualified taxpayer that files electronically “attach” the required certificate? When would the BOE be required to provide the annual listing to the FTB that this bill would require? If a credit were disallowed for noncompliance, would the recaptured credit be included in tax for the current year? Would the amount of the disallowed credit be subject to interest?

## TECHNICAL CONSIDERATIONS

This bill would modify the EZ hiring credit allowed under the PITL, and would make the same modifications to the TTA hiring credit allowed under the CTL. According to the author's office, the intention is to modify the EZ hiring credit under both the PITL and CTL. Amendment 2 is provided to achieve this intent.

This bill would modify the hiring credits for taxable years beginning on or after January 1, 2011. Because eligibility for the hiring credit is based on a transaction, the act of hiring an employee, the author may wish to consider changing the operative date to clearly provide that the hiring credit modifications would apply to employees hired on or after January 1, 2011. Amendments 1 and 2 are provided to revise the operative date to a transactional date.

This bill would require that a qualified taxpayer both apply for and obtain certification that an individual is a "qualified employee" within 21 days of the individual's first day of work. Because the 21 day application period and the 21 day period for obtaining certification run simultaneously, the credit attributable to an otherwise "qualified employee" could be denied because certification had been obtained after the 21 day period. The author may wish to amend this bill to eliminate the overlap between the application period and the date that certification must be obtained by the qualified taxpayer.

This bill specifies that a credit would be disallowed unless and until the taxpayer attaches a copy of the certification to an unspecified document. Generally, the FTB requires taxpayers to provide certification upon request to eliminate additional processing and storage issues. It is suggested that the bill be amended to require that the DOE electronically provide a list of the allocated career pathways investment credits, along with taxpayer identification numbers, to the FTB, and only require that the certification be provided by the taxpayer upon request by the FTB.

The provisions under the Education Code that address the allocation process refer to "taxable years" and the provisions under the Revenue and Taxation Code refer to "fiscal years." Because the allocation would be based on the state's fiscal year, it is suggested that the term "fiscal year" be used consistently.

## **OTHER STATES' INFORMATION**

*Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws do not provide a credit comparable to the credit allowed by this bill. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

**FISCAL IMPACT**

This bill would require that a taxpayer submit certification of their allocated “career pathways investment credit ceiling.” While the bill currently does not specify that the certification would be required to be attached to the income tax return, for purposes of this analysis it is assumed that this is the author’s intention. As a result, this bill could increase the department costs for processing and storage of the additional paperwork. The additional costs have not been determined at this time. As the bill continues to move through the legislative process and implementation concerns are resolved, costs will be identified and an appropriation will be requested, if necessary.

**ECONOMIC IMPACT**

Revenue Estimate

This provision would result in the following revenue impacts:

Estimated Revenue Impact of SB 974			
Effective for Tax Years Beginning On or After January 1, 2011			
Assumed Enactment Date By September 30, 2010			
(\$ in Millions)			
	2010-11	2011-12	2012-13
Career Pathways Investment Credit	-\$1	-\$16	-\$17
Enterprise Zone Hiring Credit Changes	\$20	\$75	\$100
Net Impact to General Fund	\$19	\$59	\$83

The revenue estimate has been prepared based on the author’s expressed intent to modify the EZ hiring credit for both PITL and CTL.

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

## **POLICY CONCERNS**

Generally, credits are limited as a percentage of amounts paid or incurred. This bill would allow a credit equal to 100 percent of the allocated amount without regard to any amount having been paid or incurred, which is unprecedented.

## **LEGISLATIVE STAFF CONTACT**

Legislative Analyst

Jahna Alvarado

(916) 845-5683

[jahna.alvarado@ftb.ca.gov](mailto:jahna.alvarado@ftb.ca.gov)

Revenue Manager

Monica Trefz

(916) 845-4002

[monica.trefz@ftb.ca.gov](mailto:monica.trefz@ftb.ca.gov)

Asst. Legislative Director

Patrice Gau-Johnson

(916) 845-5521

[patrice.gau-johnson@ftb.ca.gov](mailto:patrice.gau-johnson@ftb.ca.gov)

Analyst	Jahna Alvarado
Telephone #	(916) 845-5683
Attorney	Pat Kusiak

FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO SB 974  
AS AMENDED MAY 3, 2010

AMENDMENT 1

On page 20, line 38, ~~taxable years beginning~~ and insert:

qualified employees hired

AMENDMENT 2

On page 24, ~~lines 8 to 40, inclusive, pages 25 to 32, inclusive, page 33, lines 2 to 12, inclusive,~~ and insert:

SEC.6. Section 23622.7 of the Revenue and Taxation Code is amended to read:

23622.7. (a) There shall be allowed a **credit** against the "tax" (as defined by Section 23036) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year. The **credit** shall be equal to the sum of each of the following:

- (1) Fifty percent of qualified wages in the first year of employment.
- (2) Forty percent of qualified wages in the second year of employment.
- (3) Thirty percent of qualified wages in the third year of employment.
- (4) Twenty percent of qualified wages in the fourth year of employment.
- (5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and **Code** 3812 of

the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the **credit** under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor **Code**.

(3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions **Code**, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

~~(aa)~~

(ia) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

~~(bb)~~

(ib) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

~~(cc)~~

(ic) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

~~(dd)~~

(id) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

~~(ee)~~

(ie) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

~~(ff)~~

(if) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

~~(gg)~~

(ig) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

~~(hh)~~

(ih) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the

Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. ~~An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt~~ An ex-offender means an individual who has been convicted of a felony or a misdemeanor offense punishable by incarceration or an individual charged with a felony offense or a misdemeanor offense punishable by incarceration but placed on probation by a state court without a finding of guilt. Ex-offender does not include an individual whose record has been expunged.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

~~(aa)~~

(ia) Federal Supplemental Security Income benefits.

~~(bb) Aid to Families with Dependent Children.~~

(ib) Temporary Assistance for Needy Families.

~~(cc)~~

(ic) Food stamps.

~~(dd)~~

(id) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

~~(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area (as defined in Section 7072 of the Government Code).~~

~~(X)~~

(IX) An employee who qualified the taxpayer for the enterprise zone **hiring credit** under former Section 23622 or the program area **hiring credit** under former Section 23623.

~~(XI)~~

(X) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal ~~Job Training Partnership Workforce Training Act~~ or the ~~Greater Avenues for Independence Act of 1985~~ California Work Opportunity and Responsibility to Kids Act (CalWORKs) or who is eligible as a member of a targeted group under the Work Opportunity Tax **Credit** (Section 51 of the Internal Revenue **Code**), or its successor.

(5) "Taxpayer" means a corporation engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government **Code**.

(6) "Seasonal employment" means employment by a taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) The taxpayer shall do both of the following:

(1) ~~Obtain~~ (A) Obtain, within 21 days from the commencement date of employment, from the Employment Development Department, as permitted by federal law, the local county or city ~~Job Training Partnership~~ Workforce Investment Act administrative entity, the local county ~~GAIN~~ CalWORKs office or social services agency, or the local government administering the enterprise zone, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose. The Department of Housing and Community Development shall develop regulations governing the issuance of certificates by local governments pursuant to subdivision (a) of Section 7086 of the Government **Code**.

(B) Applications for certification shall be submitted to the certifying agency within 21 days of the commencement date of employment for the employee. The certifying agency shall not provide a certification for any employee whose employment commenced more than 21 days before the taxpayer requests a certification.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The **credit**, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the **credit**, and shall be allocated in that manner.

(C) For purposes of this subdivision, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue **Code**, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue **Code**.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue **Code**.

(2) If an employer acquires the major portion of a trade or business of another employer—~~hereinafter~~ hereafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified

employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) (A) If the employment, other than seasonal employment, of any qualified employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the **credit** allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the taxpayer, shall be increased by an amount equal to the **credit** allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California **Code** of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California **Code** of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue **Code** applies, if the qualified employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any **credit** allowable under this part.

(f) Rules similar to the rules provided in Section 46(e) and (h) of the Internal Revenue **Code** shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue **Code** applies.

(2) A regulated investment company or a real estate investment trust subject to **taxation** under this part.

(g) For purposes of this section, "enterprise zone" means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government **Code**.

(h) The **credit** allowable under this section shall be reduced by the **credit** allowed under Sections 23623.5, 23625, and 23646 claimed for the same employee. The **credit** shall also be reduced by the federal **credit** allowed under Section 51 of the Internal Revenue **Code**.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the **credit** is based shall be reduced by the amount of the **credit**, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the **credit** otherwise allowed under this section exceeds the "tax" for the taxable year, that portion of the **credit** that exceeds the "tax" may be carried over and added to the **credit**, if any, in succeeding taxable years, until the **credit** is exhausted. The **credit** shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the **credit** otherwise allowed under this section and Section 23612.2, including any **credit** carryover from prior years, that may reduce the "tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the enterprise zone. For that purpose, the taxpayer's business attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the enterprise zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section in accordance with paragraph (3).

(3) Business income shall be apportioned to the enterprise zone by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the enterprise zone during the income year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(4) The portion of any **credit** remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "tax" for the taxable year, as provided in subdivision (i).

(k) The changes made to this section by the act adding this subdivision shall apply to taxable years on or after January 1, 1997.

(1) The changes made to this section by the act adding this subdivision shall apply to qualified employees hired on or after January 1, 2011.