

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Holden Analyst: Brian Werking Bill Number: AB 9  
Related Bills: See Legislative History Telephone: 845-5103 Amended Date: March 19, 2013  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Enterprise Zone Hiring Credit/Qualified Wages Shall Exceed \$2,000 Average Monthly Wage

### SUMMARY

This bill would modify the definition of “qualified wages” and “qualified employee” for purposes of the existing Enterprise Zone (EZ) Hiring Credit.

### RECOMMENDATION

No position.

### Summary of Amendments

The March 19, 2013, amendments replaced the legislative intent language with language that would create an additional limitation on wages paid to a qualified employee before those wages would be considered qualified wages for the EZ Hiring Credit and would add and replace categories of individuals that would be considered qualified employees for the EZ Hiring Credit.

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

### Summary of Suggested Amendments

Amendments have been provided to eliminate ambiguity in regard to the definition of “qualified wages.”

### REASON FOR THE BILL

The reason for this bill is to promote job and business growth and encourage economic development.

### EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2013.

Board Position:  
\_\_\_\_\_ S      \_\_\_\_\_ NA        X   NP  
\_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
\_\_\_\_\_ N      \_\_\_\_\_ OUA

Executive Officer	Date
Selvi Stanislaus	6/19/13

## **ANALYSIS**

### **FEDERAL/STATE LAW**

Existing federal law provides special tax incentives for empowerment zones and enterprise communities to provide economic revitalization of distressed urban and rural areas.

Under the Revenue and Taxation Code, existing state law provides special tax incentives for taxpayers conducting business activities within an EZ, including a hiring credit.

A business located within an EZ may reduce income tax by a percentage of qualified wages paid to qualified employees. A qualified employee must be hired after the area is designated as an EZ 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 within the EZ and at least 50 percent must be performed inside the EZ. The business may claim up to 50 percent of the wages paid to a qualified employee as a credit against tax imposed on income from a trade or business operating within the EZ.

The credit is based on the lesser of the actual hourly wage paid or 150 percent of the current state minimum hourly wage<sup>1</sup> (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.

Taxpayers operating in an EZ are allowed the hiring credit for employing "qualified employees." "Qualified employees" for the EZs are defined by reference to various state and federal public assistance programs (Exhibit A).

A taxpayer located in an EZ is allowed a credit of up to 50 percent of wages paid to "qualified employees" in the first year, decreasing by 10 percent each year thereafter, over the course of the first 60 months of the qualified employee's employment. The taxpayer is required to obtain a voucher certificate for each of its "qualified employees." The voucher certificates are issued by the Employment Development Department or the local agency familiar with the public assistance statutes within the same EZ as the workplace of the employee.

### **THIS BILL**

This bill would modify the definition of qualified wages within the EZ Hiring Credit to add the requirement that wages exceed an average monthly wage of \$2,000 for the taxable year in order to be considered qualified wages.

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<sup>1</sup> California State minimum wage is currently \$8.00/hr.

This bill would provide that individuals employed in an industry that was significantly impacted by sequestration in the federal Balanced Budget and Emergency Budget and Emergency Deficit Control Act of 1985,<sup>2</sup> or that have been terminated or laid off, or have received a notice of termination or layoff, as a consequence of compliance with the California Global Warming Solutions Act of 2006 would qualify as “qualified employees” for purposes of the EZ Hiring Credit.

This bill would also update cross references within the definition of “qualified employee.” Specifically within the meaning of “qualified employee” the federal Job Training Partnership Act would be replaced by its successor, the Workforce Investment Act of 1998. The Greater Avenues for Independence Act of 1985 and the Aid to Families with Dependent Children would be replaced with their successor, welfare-to-work activities under the CalWORKS program.

### IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department’s programs and operations.

### TECHNICAL CONSIDERATIONS

The provision providing for the \$2,000 average monthly “qualified wage” requirement within the definition of “qualified wages” may be confusing to taxpayers. Amendments 1 and 2 are provided below to specify that the \$2,000 limitation apply to total wages in order to qualify as “qualified wages” under the “qualified wage” definition.

### **LEGISLATIVE HISTORY**

AB 231 (Perez, 2011/2012), among other things, would have modified the definition of qualified wages within the EZ Hiring Credit to allow a greater portion of wages above the minimum wage to be used to calculate the credit and would have modified the definition of “qualified employee” to include additional categories of individuals. AB 231 failed to pass out of the Assembly by the constitutional deadline.

AB 1139 (Perez, 2009/2010), among other things, would have modified the definition of qualified wages within the EZ Hiring Credit to require a portion of an employee’s healthcare be paid by the employer before that employees wages would be considered qualified wages. AB 1139 failed to pass out of the Assembly by the constitutional deadline.

AB 121 (Maze, 2007/2008), would have modified the definition of qualified employee within the EZ Hiring Credit to include former foster care recipients. AB 121 failed to pass out of the Assembly by the constitutional deadline.

### **FISCAL IMPACT**

This bill would not significantly impact the department’s costs.

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<sup>2</sup> BBEDCA, Title II of Public Law 3999-177, commonly known as the Gramm-Rudman-Hollings Act.

**ECONOMIC IMPACT**

Revenue Estimate

Estimated Revenue Impact of AB 9 As Amended March 19, 2013 For Taxable Years Beginning On or After January 1, 2013 Assumed Enactment After June 30, 2013 (\$ in Millions)			
2013-14	2014-15	2015-16	2016-17
+ \$300	+ \$280	+ \$300	+ \$490

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

**SUPPORT/OPPOSITION**

Support: None Provided.

Opposition: None provided.

**ARGUMENTS**

Proponents: Supporters could argue that providing an additional wage requirement to trigger eligibility for the EZ Hiring Credit would provide an incentive for employers to pay their employees a higher wage.

Opponents: Some could argue that providing an additional wage requirement to trigger eligibility for the credit would reduce the credit's incentive to encourage employers to hire new employees.

**LEGISLATIVE STAFF CONTACT**

Brian Werking

Legislative Analyst, FTB  
(916) 845-5103

[brian.werking@ftb.ca.gov](mailto:brian.werking@ftb.ca.gov)

Mandy Hayes

Revenue Manager, FTB  
(916) 845-5125

[mandy.hayes@ftb.ca.gov](mailto:mandy.hayes@ftb.ca.gov)

Jahna Carlson

Acting Asst. Legislative Director, FTB  
(916) 845-5683

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

## Exhibit A

Qualified employee means an employee who qualified the taxpayer for the EZ Hiring Credit under former Section 17053.8 or the program area hiring credit under former Section 17053.11, or meets any of the following criteria:

- Was a person eligible for services under the federal Job Training Partnership Act 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.
- Was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985, or its successor.
- Was an economically disadvantaged individual 14 years of age or older.
- 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.
- 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.
- Was a member of a federally recognized Indian tribe, band, or other group of Native American descent.
- Was a resident of a targeted employment area.
- Was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.
- Was a dislocated worker who meets any of the following:
  - 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.
  - 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.
  - 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.
  - 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.
  - 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.

- 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.
- 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.
- 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.
- Was a person eligible for or a recipient of any of the following:
  - Federal Supplemental Security Income benefits.
  - Aid to Families with Dependent Children.
  - CalFresh benefits.
  - State and local general assistance.

Analyst	Brian Werking
Telephone #	(916) 845-5103
Attorney	Pat Kusiak

FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 9  
AS AMENDED MARCH 19, 2013

AMENDMENT 1

On page 3, strikeout line 13, replace "Qualified" with "Total"

AMENDMENT 2

On page 12, line 8, replace "Qualified" with "Total"