SECTION 12000 LOCAL AGENCY MILITARY BASE RECOVERY AREA HIRING CREDIT

References 17053.46(a); 17053.46(b)(4)(B); 23646(a); 23646(b)(4)(B)

For each taxable year beginning on or after January 1, 1995, the California Revenue and Taxation Code (CR&TC) provides a hiring credit for "qualified taxpayers" who operate or invest in a business located within a designated Local Agency Military Base Recovery Area (LAMBRA) and hire "qualified employees" and pay them "qualified wages". LAMBRAs were established in California to stimulate development in areas that experience military base closures.

The LAMBRA hiring credit applies to those employees hired after the designation date of the LAMBRA.

12100 Geographic Boundaries and Designation Dates

For a listing of LAMBRAs, see "*LAMBRA Locations and Designation Dates*" EDAM 1320. To verify an address, refer to EDAM 1300.

12200 Qualified Taxpayer

References 17053.46(b)(5); 17053.46(c); 23646(b)(5); 23646(c)

EDAM 12210	Allowance of the LAMBRA Hiring Credit
EDAM 12220	Pass-Through Entities
EDAM 12230	Controlled Groups
EDAM 12240	Acquired Businesses

A "qualified taxpayer" is any taxpayer engaged in a trade or business within a LAMBRA and, within the first two taxable years of commencing business within the LAMBRA, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

For qualified employees hired on or after January 1, 2001, the taxpayer shall obtain and retain certification (voucher) as discussed in EDAM 12430, that provides that a qualified employee meets the eligibility requirements applicable immediately preceding commencement with the taxpayer as discussed in EDAM 12400.

NOTE: Failure to obtain the certification (voucher) results in the taxpayer not meeting all the qualifications of a qualified taxpayer eligible for the hiring credit. A taxpayer must obtain a certification (voucher).

12210 Allowance of the LAMBRA Hiring Credit

References 17053.46(a); 17053.46(d)(4); 23646(a); 23646(d)(4)

Taxpayers engaged in operations within a LAMBRA are allowed to utilize the LAMBRA hiring credit beginning in the first year of operations within the LAMBRA even though they cannot fulfill the definition of a qualified taxpayer before the close of the second year of operations in the LAMBRA when the net increase in jobs is computed. If at the end of the second year the taxpayer does not meet the definition of a "qualified taxpayer", the LAMBRA hiring credit previously utilized needs to be recaptured.

12220 Pass-Through Entities

The determination of whether a taxpayer is a qualified taxpayer is made at the entity level. The term "pass-through entity" means any partnership or S corporation. The hiring credit is allowed to the pass-through entity and passed through to the partners or shareholders.

12230 Controlled Groups

References 17053.46(c)(1)(A); 17053.46(c)(1)(B); 23646(c)(1)(A); 23646(c)(2)

All employees of trades or businesses that are under common control, or members of the same controlled group of corporations, are treated as employed by a single taxpayer.

A controlled group of corporations is defined in IRC § 1563(a) as modified by the California Revenue & Taxation Code, to replace "at least 80%" with "more than 50%". The determination is made without regard to subsections (a)(4) and (e)(3)(C) of IRC § 1563.

NOTE: Controlled groups of taxpayers may not transfer employees between members to trigger or increase the credit.

12240 Acquired Businesses

References 17053.46(c)(2); 23646(c)(3)

For purposes of the hiring credit, if a major portion of a business is acquired from another employer, the employment relationship between the employee and the new employer is not treated as terminated if the employee continues employment in that business. Also, if a major portion of a separate unit of a business predecessor is acquired, the employment relationship between the employee and the new employer is not treated as terminated if the employee continues employment in that business.

NOTE: The new employer, "*steps into the shoes*" of the old employer for purposes of incurring future credits.

12300 Qualified Wages

References 17053.46(b)(1); 17053.46(b)(2); 17053.46(e); 23646(b)(1); 23646(b)(2)

EDAM 12310	Annual Wage Limitation
EDAM 12320	Estates and Trusts
EDAM 12330	Non-Qualified Wages
EDAM 12340	Minimum Wage Chart

Qualified wages are wages paid or incurred to employees (qualified) during the consecutive 60-month period beginning with the first day the employee commences employment with the taxpayer. For qualified employees hired before the expiration date of the LAMBRA, qualified wages paid or incurred within the 60-month period beginning with the first day the employee commences employment with the taxpayer shall continue to qualify for the credit after the area expiration date, as if the LAMBRA designation were still in existence and binding.

Qualified *wages* means that portion of hourly wages that does not exceed 150% of the minimum wage.

- Minimum wage means the wage established by the Industrial Welfare Commission. When the California minimum wage is higher than federal minimum wage, use the California minimum wage for purposes of this credit.
- To determine a salaried employee's hourly wage, divide the total salary by the average hours worked, normally 2,000 hours per year.

12310 Annual Wage Limitation

The total amount of qualified wages taken into account for purposes of claiming the credit shall not exceed two million dollars ($2,000,000) each taxable year.

12320 Estates and Trusts

In the case of an estate or trust, apportion the qualified wages between the estate/trust and the beneficiaries based on the income allocable to each. Consequently, any beneficiary, to whom wages are apportioned, is treated as the employer with respect to those wages.

12330 Non-Qualified Wages

Qualified wages *do not* include any wages paid or incurred on or after the area expiration date except as noted previously for qualified employees hired before the expiration of the LAMBRA.

12340 Minimum Wage Chart

Effective Date	Minimum Wage	Maximum Wage (150% of Minimum Wage)
Prior to October 1, 1996	$4.25	$6.37
October 1, 1996, through February 28, 1997	$4.75	$7.12
March 1, 1997 through August 31, 1997	$5.00	$7.50
September 1, 1997 through February 28, 1998	$5.15	$7.72
March 1, 1998 to December 31, 2000	$5.75	$8.62
January 1, 2001 to December 31, 2001	$6.25	$9.37
January 1, 2002 to Current	$6.75	$10.12

12400 Qualified Employee

References 17053.46(b)(4); 17053.46(b)(6); 23646(b)(4); 23646(b)(6)

EDAM 12410 Seasonal Employees
EDAM 12420 Leased Employees
EDAM 12430 Vouchering Form TCA EZ1

A *qualified employee* is either a "qualified disadvantaged individual" or a "qualified displaced employee".

A "<u>qualified disadvantaged individual</u>" is an individual who satisfies all of the following:

<u>ANNUAL TESTS</u>

- At least 90% of the individual's services for the taxpayer, during the taxable year, must be directly related to the conduct of the taxpayer's trade or business located within the LAMBRA;
- At least 50% of the individual's services for the taxpayer, during the taxable year, must be performed within the boundaries of the LAMBRA;

<u>TIME OF HIRE TESTS</u>

1. The individual is hired after the area was designated as a LAMBRA; and
2. Immediately prior to starting work for the taxpayer, the individual is any of the following:

For taxable years beginning on or after January 1, 1999:

1. Eligible for services under the federal Job Training Partnership Act (JTPA);
2. Eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence (GAIN) Act of 1985;
3. An economically disadvantaged individual 16 years of age or older;
4. A qualified dislocated worker (refer to the CR&TC or the 3807 Business Booklet for an expanded definition);
5. Enrolled in or has completed a state rehabilitation plan;
6. A service-connected disabled veteran;
7. A veteran of the Vietnam era;
8. A veteran who recently separated from military service;
9. An ex-offender;
10. A person who is a recipient of;
    - Federal Supplemental Security Income (SSI) benefits;
    - Aid to Families with Dependent Children (AFDC);
    - Food stamps; or

- State and local general assistance;

11. A Native American.

For taxable years beginning on or after January 1, 1995, and before January 1, 1999:

3. Eligible for services under the federal Job Training Partnership Act (JTPA), or its successor;
4. Eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence (GAIN) Act of 1985, or its successor;
5. Eligible, as determined by EDD, under the federal Targeted Jobs Tax Credit Program, whether or not this program is in effect

A "qualified displaced employee" is an individual who satisfied all of the following:

ANNUAL TESTS

- At least 90% of the individual's work for the taxpayer, during the taxable year, must be directly related to the conduct of the taxpayer's trade or business located within the LAMBRA;
- At least 50% of the individual's services for the taxpayer, during the taxable year, must be performed within the boundaries of the LAMBRA;

TIME OF HIRE TESTS

- The individual is hired after the LAMBRA was designated as a LAMBRA; and
- The employee is a civilian or military employee of a base or former base who has been displaced as a result of a federal base closure act.

12410 Seasonal Employees

References 17053.46(b)(1)(C); 17053.46(b)(7); 23646(b)(1)(C); 23646(b)(7)

"Seasonal employment" means employment that has regular and predictable substantial reductions in business operations.

Reemployment of an individual, in connection with any increase (including a regularly occurring seasonal increase) in business operations, does not constitute commencement of employment for purposes of the LAMBRA hiring credit.

12420 Leased Employees

The "employer" is the qualified taxpayer and may qualify for the hiring credit for leased employees. The employer can be either the leasing company or the subscriber to the leasing company. Generally, the employer has the legal obligation to pay the payroll taxes of the employee, and the right to control and direct the workers (employee's) services.

Internal Revenue Service (IRS) Publication 15-A, *Employer's Supplemental Tax Guide* provides guidelines for establishing an employment relationship and provides examples to consider in determining the employer-employee relationship.

12430 Vouchering Form TCA EZ1

References 17053.46(c); 23646.7(c)

The *Form TCA EZ1* certifies that the employee meets the eligibility requirements of a qualified employee as discussed in EDAM 12400. The qualified taxpayer shall get *Form TCA EZ1* from one of the following applicable entities:

- The Employment Development Department (EDD);
- The local county JTPA administrative entity;
- The local city JTPA administrative entity;
- The local county GAIN office; or
- The local social services agency.

The EDD may provide preliminary screening and referral to the certifying agency. The qualified taxpayer needs to retain a copy of the certification and provide it upon request to the Franchise Tax Board.

NOTE: Failure to obtain the certification (voucher) results in the taxpayer not meeting all the qualifications of a qualified taxpayer eligible for the hiring credit. A taxpayer must obtain a certification (voucher).

12500 Credit Computation

References 17053.46(a); 17053.46(b)(1)(B); 17053.46(i); 23646(a); 23646(b)(1)(B); 23646(i)

For each taxable year beginning on or after January 1, 1995, a hiring credit is allowed to a qualified taxpayer for hiring a qualified employee for employment within a LAMBRA. The credit is equal to the sum of each of the following:

- 50% of the qualified wages during the first year of employment.
- 40% of the qualified wages during the second year of employment.
- 30% of the qualified wages during the third year of employment.
- 20% of the qualified wages during the fourth year of employment.
- 10% of the qualified wages during the fifth year of employment.

The total amount of qualified wages used to compute the LAMBRA hiring credit cannot exceed $2,000,000 per each taxable year.

The credit percentage is based on the employee's date of employment and subsequent anniversary dates. The taxpayer's tax year does not control the applicable credit percentages. With the exception of the first and last year of the credit, within one tax year, two percentage ranges for the computation of the credit is used.

Example: An employee was hired 7/1/1998, and the taxpayer is completing the tax return for the year ending 12/31/1999. For the period 1/1/1999 to 6/30/1999, the hiring credit is based on 50% of qualified wages. For the period 7/1/1999 to 12/31/1999, the hiring credit is based on 40% of qualified wages.

Once the employee commences employment, the credit percentage range begins and generally is not interrupted in the event of a subsequent layoff and rehire of the employee.

Example: An employee is hired 7/1/1998, is temporarily laid off 2/1/1999, and is rehired 4/1/1999. The 50% credit range runs from 7/1/1998 to 6/30/1999 regardless of the layoff period between 2/1/1999 and 3/31/1999.

In the case where an employee qualifies the taxpayer to take more than one wage credit, the taxpayer may claim only one credit for the same wage expense.

12510 Reduction for Other Tax Credits

References 17053.46(f); 23646(f)

The LAMBRA hiring credit is reduced by the credit allowed under CR&TC §17053.7 and 23621 (Jobs Tax Credit), and the federal credit allowed under IRC § 51 (Work Opportunity Tax Credit – WOTC).

12520 Wage Expense Reduction

References 17053.46(f); 23646(f)

The taxpayer must reduce any deduction for wages by the amount of the LAMBRA hiring credit allowed (includes any current year credit to be carried forward).

12530 Business Income Activity Limitation

References 17053.46(h); 23646(h)

The amount of the hiring credit or the sales or use tax credit (see Chapter 13) claimed, including any credit carryover from prior years, may not exceed the amount of tax on the taxpayer's LAMBRA business income in any year. Depending on the tax year involved, the LAMBRA business income is that portion of the taxpayer's *California source* business income or the worldwide income that is apportioned to the LAMBRA. Non-business income or loss is not included in the calculation of business income from the LAMBRA. Each taxpayer claiming the credit must compute the LAMBRA business income and resulting tax.

Example: Corp. A operates entirely within a LAMBRA. In order to determine the amount of hiring credit allowable, the business income and the tax on that business income must be determined. Corp. A has the following items of income and expense:

Income from business operations	$30,000
Interest from investment which is unrelated to Corp. A's business operations	$2,000
Business expenses	(17,000)
Net Taxable Income	$15,000

Corp. A's income attributed to business operations is:

Income from business operations	$30,000
Business expenses	(17,000)
Net Business Income	$13,000

To determine the LAMBRA hiring credit allowable, the net business income is multiplied by the current tax rate.

Net Business Income	$13,000
x 8.84%	x .0884
Tax associated with business income	$1,149

In this example, the taxpayer can offset the tax of $1,149 with the LAMBRA hiring credit available (up to $1,149).

NOTE: "tax"/"net tax" and alternative minimum tax impose limitations on the allowable offset but were not considered a factor in this example.

12540 General Provisions – Apportionment of Business Income

References 17053.46(h)(2); 17053.46(h)(3); 23646(h)(2); 23646(h)(3)

If a business is located within and outside of a LAMBRA, or in more than one LAMBRA, the taxpayer must determine the portion of the total business income that is attributable to the LAMBRA.

- Business income is defined under the provisions of the Uniform Division of Income for Tax Purposes Act (UDITPA).
- Components of the factors are defined under the provisions of UDITPA.

For taxable years beginning on or after January 1, 1998, business income shall be apportioned to the LAMBRA by multiplying the taxpayer's *California* source business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two (2).

For taxable years beginning on or after January 1, 1995, and before January 1, 1998, business income is apportioned to the LAMBRA by multiplying the *worldwide* business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two (2).

12541 Property Factor – Income Apportionment

The property factor is a fraction. The numerator of the property factor is the average value of the real and tangible personal property owned or rented and used or available for use by the taxpayer *within the LAMBRA* during the taxable year.

1. For taxable years beginning on or after January 1, 1998, the denominator is the average value of all real and tangible personal property owned or rented and used or available for use by the taxpayer during the taxable year *within California*.
2. For taxable years beginning on or after January 1, 1995, and before January 1, 1998, the denominator is the average value of all real and tangible personal property owned or rented and used or available for use during the taxable year *worldwide.*

Rented property is valued at 8 times the net annual rental rate. The net annual rental rate is the total rent paid for the property, less any subrental rates paid by subtenants.

12542 Payroll Factor – Income Apportionment

The payroll factor is a fraction. The numerator of the payroll factor is the total compensation paid to employees working for the taxpayer *within the LAMBRA* during the taxable year.

- For taxable years beginning on or after January 1, 1998, the denominator is the total compensation paid to employees working for the taxpayer *in California* during the taxable year.
- For taxable years beginning on or after January 1, 1995, and before January 1, 1998, the denominator is the total compensation paid to employees working *worldwide* during the taxable year.

Example: For the taxable year ending 12/31/99, Corp. A operates within and outside a LAMBRA. Total business income of $13,000 needs to be apportioned to the LAMBRA. The following amounts apply to Corp. A's property and payroll:

LAMBRA Property	$40,000
CA Property for Corp. A	$100,000
LAMBRA Payroll	$5,000
CA Payroll for Corp. A	$10,000

LAMBRA Property/CA Property	=.40	
LAMBRA Payroll/CA Payroll	=.50	
	.90/2 = .45	LAMBRA Apportionment Factor

Business income	$13,000
Apportionment Factor	x 0.45
LAMBRA Business Income	$5,850
Current Tax Rate	x .0884
Tax attributable to LAMBRA business income	$517

For an example of apportionment rules pre-1998, refer to EDAM 23440, *General Provisions - Income Apportionment*.

12543 Apportionment – Combined Groups

Taxable years beginning on or after 1/1/1998

For members of a combined group, the limitation is based on the intrastate apportioned business income for each taxpayer doing business within the LAMBRA. The numerator of the apportionment formula is based on each LAMBRA taxpayer's separate LAMBRA property and payroll factor amounts and the denominator is based on each LAMBRA taxpayer's separate California property and payroll factor amounts.

For taxable years beginning on or after January 1, 1995, and before January 1, 1998: For members of a combined group, the credit limitation is based on the combined groups worldwide business income (before CA apportionment). The numerator of the apportionment formula is based on each LAMBRA taxpayer's separate LAMBRA payroll and property amounts and the denominator is based on the combined groups worldwide payroll and property amounts.

For an example of apportionment under this method refer to EDAM 23440.

Example: For the taxable year ending 12/31/99, parent corporation A has two subsidiaries, B and C. Corporations A and B operate within a LAMBRA. The combined group operates within and outside California and apportions its income to California using Schedule R. The combined group's business income apportioned to California was $1,000,000. Corporation A and B's share of California business income is $228,000 and $250,000 respectively. Corporation A and B's separate LAMBRA and separate California property and payroll factor amounts are shown below.

Business income apportioned to the LAMBRA was determined as follows:

	A	B
Property Factor		
LAMBRA Property	$1,000,000	$ 800,000
California Property	$1,000,000	$1,200,000
Apportionment %	100%	66.66%
Payroll Factor		
LAMBRA Payroll	$800,000	$ 800,000
California Payroll	$800,000	$1,000,000
Apportionment %	100%	80%
Average Apport. % (Property + Payroll Factors)/2	100%	73.33%

Apportioned		
Business Income	$228,000	$250,000
LAMBRA Income	$228,000	$183,333

12544 Apportioning for Personal Income Tax Taxpayers

The following examples show the application of the apportioning rules to personal income tax taxpayers.

***Example**:* Ray Smith is vice president of an S corporation that has two locations, one within a LAMBRA and one outside the LAMBRA. Eighty percent (80%) of the S corporation's business is attributable to the LAMBRA. (**NOTE**: This percentage was determined by the S corporation, using Worksheet IV from the FTB 3807 Business Booklet, at the time the S corporation return was prepared). Ray divides his time equally (50% & 50%) between the two offices of the S corporation.

Mary Smith (Ray's spouse) works for the S corporation at its office located within the LAMBRA.

Ray and Mary Smith have the following 1999 items of California income and expense:

Ray's salary from the S corp.	$100,000
Mary's salary from the S corp.	75,000
Interest on savings account	1,000
Dividends	3,000
Schedule K-1 (100S) from the S corp.	
Ordinary income	40,000
LAMBRA business expense deduction	(5,000)*
Ray's unreimbursed employee expenses from Schedule A	(2,000)

*The LAMBRA business expense deduction is a separately stated item on Schedule K-1 (100S).

The Smith's LAMBRA income is computed as follows:

Ray's LAMBRA salary ($100,000 x 50%)	$50,000
Mary's LAMBRA salary ($75,000 x 100%)	75,000
Pass-through ordinary income from the S-Corp. ($40,000 x 80%)	32,000
LAMBRA business expense deduction from the S-Corp.	(5,000)
Ray's unreimbursed employee business expenses (2,000 x 50%)	(1,000)
Total LAMBRA income	$151,000

Ray and Mary must compute the tax on the total LAMBRA income of $151,000 (as if it represents all of their income). Using the tax rate schedule for the filing status married filing joint; the 1999 tax on

$151,000 is $10,659. The $10,659 is the first limitation on LAMBRA credits for the 1999 tax year. The second limitation on the credits is the net tax on all income.

NOTE: The standard deduction and personal or dependency exemptions are not included in the computation of LAMBRA income since they are not related to trade or business activities.

12545 S Corporations

References 17053.46(f); 23646(f); 23803(a)(1)(A); 23803(a)(1)(F)

An S corporation's hiring credit may reduce the LAMBRA tax at both the corporate and shareholder levels. However, the S corporation may only use one-third (1/3) of the credit to reduce the tax on the S corporation's LAMBRA income.

One hundred percent (100%) of the LAMBRA hiring credit is passed through to the S corporation shareholders. The full amount of the credit is reported on Schedule K (100S) and passed through to the shareholders on Schedules K-1 (100S).

The wage reduction for the S corporation is equivalent to the 1/3 credit amount. The wage reduction for the shareholders is 100% of the credit amount, equal to the amount of credit passing through to them.

Example: An S Corporation computes a $3,000 hiring credit. The S corporation's credit is $1,000 and the wage reduction is $1,000. The $3,000 credit is passed through to the S corporation's shareholders, and the wage reduction recognized by the shareholders is $3,000.

12600 Credit Usage & Carryover

References 17053.46(g); 17053.46(h)(1); 17053.46(h)(4); 23646(g); 23646(h)(1); 23646(h)(4)

EDAM 12610	Credit Will Not Reduce Certain Taxes
EDAM 12620	Credit Recapture
EDAM 12621	Non-Seasonal Employees
EDAM 12622	Seasonal Employees
EDAM 12623	Credit Recapture – Exceptions
EDAM 12624	Change in the Form of the Trade or Business
EDAM 12625	Special LAMBRA Recapture

The total amount of the LAMBRA hiring credit and sales or use tax credit, including any credit carryover from prior years, that may reduce the "tax"/"net tax" for the taxable year, shall not exceed the amount of tax imposed on the taxpayer's business income attributable to the LAMBRA, determined as if that income represented all of the income of the taxpayer.

The portion of the credit that exceeds the "tax"/"net tax" for the taxable year, is carried over and added to the credit, if any, in the following year. The credit is carried over to succeeding years, until it is exhausted.

Example: A taxpayer has a $4,900 LAMBRA hiring credit. Tax imposed on LAMBRA business income is $4,700, and the taxpayer's overall "net tax" is $4,000. The taxpayer would be eligible to claim a $4,000 maximum hiring credit.

Total LAMBRA hiring credit	$4,900
Tax on LAMBRA income	$4,700
First limitation:	
Lesser of total credit or tax on LAMBRA income	$4,700
Second limitation:	
Lesser of tax on LAMBRA income or "*net tax*"/"*tax*"	$4,000
Maximum credit allowed:	
Lesser of *LAMBRA tax limitation* or "*net tax*"/"*tax*" *limitation*	$4,000
Total LAMBRA hiring credit	$4,900
Maximum credit allowed	$4,000
Carryover	$ 900

In the event that a credit carryover is allowable for any taxable year after a LAMBRA designation has expired, the area is deemed to remain in existence for purposes of computing the business income limitation.

12610 Credit Will Not Reduce Certain Taxes

The LAMBRA hiring credit cannot reduce the:

- Minimum franchise tax (corporations, limited partnerships, limited liability partnerships, LLCs, and S corporations);
- Annual tax (partnerships, LLCs classified as partnerships, and Qsubs);
- Built-in gains tax (S corporations);
- Excess net passive income tax (S corporation);
- Alternative minimum tax (corporations, exempt organizations, individuals and fiduciaries); or
- Regular tax below tentative minimum tax.

12620 Credit Recapture

References 17053.46(d)(1)(A); 17053.46(d)(1)(B); 17053.46(d)(3); 23646(d)(1)(A); 23646 (d)(1)(B); 23646 (d)(3)

12621 Non-Seasonal Employees

Recapture of the hiring credit is required if the employee is terminated before the end of the longer of the following two periods:

- The first 270 "days of employment" (whether or not consecutive); or
- Ninety (90) "days of employment" plus 270 calendar days.

To recapture the credit, the taxpayer must add to the current year's tax the amount of credit claimed for the year of termination, as well as all prior year credit claimed for the terminated employee.

12622 Seasonal Employees

For taxable years beginning on or after January 1, 1998, for seasonal employees, the taxpayer must recapture the amount of the credit if employment is terminated before the completion of 270 "days of employment" during the 60-month period beginning the day the employee commences employment with the taxpayer except as subsequently discussed.

To recapture the credit, the taxpayer must add the amount of credit previously claimed in all years to the tax for the tax year that includes the 60th month of employment.

For all employees, a ‘‘day of employment’’ includes any day the employee was paid to work, regardless of whether the employee actually worked (including paid holidays, sick days, and vacation days).

NOTE: Any increase in tax, due to credit recapture, cannot be offset by the current year hiring credit.

12623 Credit Recapture – Exceptions

References 17053.46(d)(2)(A); 17053.46(d)(2)(B); 23646(d)(2)(A); 23646(d)(2)(B)

For both regular and seasonal employees, the credit recapture will not apply if the termination was:

- Voluntary on the part of the employee;
- Caused by the employee becoming disabled;
- Due to employee misconduct;
- Due to a substantial reduction in business; or
- In order to enable other qualified employees to be hired, creating an increase in the number of qualified employees and the hours of employment.

12624 Change in the Form of the Trade or Business

References 17053.74(e)(2)(C); 23622.7(e)(2)(C)

The employment relationship between the taxpayer and an employee is not treated as terminated by reason of a mere change in the form of conducting the trade or business. If the employee continues employment in that trade or business and the taxpayer retains a substantial interest in that trade or business, the employee is not treated as terminated.

12625 Special LAMBRA Recapture

References 17053.45(b)(2); 17053.45(g)(2); 23645(b)(2); 23645(g)(2)

The taxpayer must have a *net increase of one or more jobs in the LAMBRA* at the close of the second taxable year of doing business within a LAMBRA. If there is not a net increase of one or more jobs, the credit previously claimed is added to the taxpayer's "net tax"/"tax" for the second taxable year.

The net increase in the number of jobs is determined by applying two tests:

The first test requires a taxpayer to subtract the number of full-time employees (defined as 2,000 paid hours per employee per year) employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees employed in this state during the second taxable year after commencing business operations in the LAMBRA.

- For taxpayers that commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero.

If the first test is met, the credit is allowed only if the second test is met which is one or more full-time employees are employed within the LAMBRA.

To determine the first test of the net increase in jobs requirement, the following formula is used:

- The total number of hours worked in this state, by the taxpayer's CA employees (not to exceed 2,000 hours per employee) who are paid an hourly wage, divided by 2,000, plus
- The total number of months worked in this state, by the taxpayer's CA employees who are salaried employees, divided by 12.

NOTE: For taxpayers that first commence doing business in the LAMBRA during the taxable year, the divisors “2,000” and “12” shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

To determine the second test of the net increase in jobs requirement, the following formula is used:

- The total number of hours worked in this state, by the taxpayer's LAMBRA employees (not to exceed 2,000 hours per employee) who are paid an hourly wage, divided by 2,000, plus,
- The total number of months worked in this state, by the taxpayer's LAMBRA employees who are salaried employees, divided by 12.

Example: A Corporation employs four individuals before establishing operations in the LAMBRA on January 1, 1998. The following is the employment information for the employees for the taxable year prior to operating in the LAMBRA:

- Employee #1: Salaried, employed for 12 months.
- Employee #2: Hourly, full-time; worked 2,080 hours per year.
- Employee #3: Hourly, part-time; worked 1,500 hours per year.
- Employee #4: Hourly, part-time; worked 1,500 hours per year.

The corporation moves its entire operations within the LAMBRA on January 1, 1998. At the end of the first year of operation within the LAMBRA, the corporation employed the following individuals:

- Employee #1: Salaried; employed 24 months.
- Employee #2: Hourly, full-time; worked 2,080 hours during the year.
- Employee #3: Hourly, part-time; worked 2,000 hours during the year.
- Employee #4: Hourly, part-time; worked 1,600 hours during the year.
- Employee #5: Hourly, part-time; worked 1,600 hours during the year.

At the end of the 2nd year of operation in the LAMBRA, the corporation employed the following individuals:

- Employee #1: Salaried; employed 36 months.
- Employee #2: Hourly, full-time; worked 2,080 hours during the year.
- Employee #3: Hourly, part-time; worked 2,000 hours during the year.
- Employee #4: Hourly, part-time; worked 1,700 hours during the year.
- Employee #5: Hourly, part-time; worked 1,900 hours during the year.

The first test for the net increase in jobs is computed as follows:

<u>For the taxable year beginning prior to 1/1/98, (the relocation date to the LAMBRA):</u>

<u>Hourly Employees</u>:	
Employee #2	2000 hours
Employee #3	1500 hours
Employee #4	<u>1500</u> hours
Total	5000 hours
Divide by 2000	
Total hourly employees	2.5 employees

Salaried Employees	
Employee #1	12 months
Total	12 months
Divide by 12	
Total Salaried employees	1.0 employee
Total employees	3.5 employees

At the end of the 2nd year of operation in the LAMBRA:

Hourly Employees:	
Employee #2	2000 hours
Employee #3	2000 hours
Employee #4	1700 hours
Employee #5	1900 hours
Total	7600 hours
Divide by 2000	
Total hourly employees	3.8 employees

Salaried Employees	
Employee #1	12 months
Total	12 months
Divide by 12	
Total Salaried employees	1.0 employee
Total employees	4.8 employees

Subtract the total employees employed in the year before beginning operations in the LAMBRA from the employees employed at the end of the second year of operations in the LAMBRA

Employees employed at the end of the second Year of operation in the LAMBRA	4.8 employees
Employees employed prior to relocation To the LAMBRA	3.5 employees
Total increase	1.3 employees

The taxpayer has met the first test of the net increase in jobs requirement. The taxpayer had a net increase of at least one employee in the state of CA at the close of the two-year period that began when the taxpayer relocated into the LAMBRA.

- If the taxpayer did not have a net increase of one or more employees during this time-period, all LAMBRA tax incentives must be recaptured.

The second test for the net increase in jobs is computed as follows:

At the end of the 1st year of operation in the LAMBRA:

Hourly Employees:	
Employee #2	2000 hours
Employee #3	2000 hours
Employee #4	1600 hours
Employee #5	1600 hours
Total	7200 hours
Divide by 2000	
Total hourly employees	3.6 employees
Salaried Employees	
Employee #1	12 months
Total	12 months
Divide by 12	
Total Salaried employees	1.0 employee
Total employees at the end of the 1st year of operation in the LAMBRA	4.6 employees

At the end of the 2nd year of operation in the LAMBRA:

Hourly Employees:	
Employee #2	2000 hours
Employee #3	2000 hours
Employee #4	1700 hours
Employee #5	1900 hours
Total	7600 hours
Divide by 2000	
Total hourly employees	3.8 employees
Salaried Employees	
Employee #1	12 months
Total	12 months
Divide by 12	
Total Salaried employees	1.0 employee
Total employees at the end	4.8 employees

of the 2nd year of operation
in the LAMBRA

The taxpayer has met the second test of the net increase in jobs requirement. The taxpayer had at least one employee in the LAMBRA in each of the first two years of operations in the LAMBRA.

- If the taxpayer did not have at least one employee in the LAMBRA during these time periods, all LAMBRA tax incentives must be recaptured.

12700 Record Keeping Requirements

For each qualified employee, documentation should be kept to show the following:

- Certification Voucher – form TCA EZ1 (employees hired on or after January 1, 2001).
- Employee name
- Date employee was hired
- Number of hours the employee worked for each month of employment
- Wage rate paid for each month of employment
- Schedule calculating the hiring credit
- Overtime hours
- Location where services were performed
- Date employee was terminated, and reason why