



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
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Chair

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November 1, 2000

Information Letter
20-0037

Dear *****:

Thank you for your letter of ***** , in which you requested a written ruling regarding the Enterprise Zone Program. ***** , I contacted you via telephone for clarification of your request.

During our phone conversation and in your letter of ***** , you provided the following information:

1. ***** is located in an Enterprise Zone and has employees who have already received certification (vouchers) that they meet the eligibility requirements necessary to claim the hiring credit provided in Revenue and Taxation section 23622.7;
2. You may form a new corporation which is both unrelated to and would conduct a separate and distinct business from *****;
3. ***** would terminate the employees referenced above in no. 1 and the new corporation would rehire these same employees the next day.

Your question is essentially whether hiring credits incurred by ***** prior to the employees' termination would be transferred to the new corporation when it rehires the same employees.

As a matter of policy, the Franchise Tax Board does not rule on hypothetical situations and/or questions primarily involving factual issues. (See Attached FTB Notice 89-277, page 5, paragraphs C (1) and (5).) The enclosed Ruling Guidelines describe in greater detail the Franchise Tax Board's ruling policy.

Therefore, because your request is based on a hypothetical situation and involves primarily factual issues, this letter is being provided for informational purposes only and may not be considered "written advice from the Board" within the meaning of Revenue and Taxation Code section 21012.

Nevertheless, in response to your inquiry, the following analysis may be of assistance to you in helping the taxpayer reach a determination for its tax position purposes. In the event that

Information Letter 20-0037

November 1, 2000

Page 2

the taxpayer's position with respect to the hiring credit would be reviewed by California, the taxpayer should be prepared to provide this type of analysis in support of the taxpayer's position.

The applicable Revenue and Taxation Code section provides that the "taxpayer" (and not the employee) incurs or is the "owner" of the hiring credit. (Revenue and Taxation Code section 23622.7(a).) Therefore, any hiring credits incurred by ***** prior to the qualified employees' termination would remain with ***** even if the new corporation rehires the same employees.¹

If you have any questions or concerns, please contact me at the above number.

Sincerely,

Ann Hoover
Tax Counsel

Enclosure

¹ Note that hiring credits are applied only against tax on Enterprise Zone business income and may be carried over until exhausted. (See Revenue and Taxation Code section 23622.7(i) and (j).)