

AMENDED IN ASSEMBLY APRIL 24, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1726**

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**Introduced by Assembly Member Cervantes**

February 22, 2019

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An act to add and repeal Sections 17053.72 and 23672 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1726, as amended, Cervantes. Income taxes: California work opportunity tax credit.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.

This bill, for each taxable year beginning on or after January 1, 2020, and before January 1, 2025, would allow a credit against the taxes imposed under both laws to a qualified employer, as defined, in an amount equal to that allowed under the federal Work Opportunity Tax Credit, as modified. The bill would prohibit the credit from exceeding \$2,400 per qualified employee per taxable year. The bill would make related declarations and would require the Employment Development Department to prepare a specified report related to the specific goals, purposes, objectives, performance indicators, and data collection requirements for these credits.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1     ~~SECTION 1. (a) It is the intent of the Legislature in enacting~~  
 2     ~~this act to provide for tax credits that would serve as an alternative~~  
 3     ~~credit that results in at least an equal amount of credit for some of~~  
 4     ~~the same taxpayers as under the income tax credits allowed by~~  
 5     ~~Sections 17053.73 and 23626 of the Revenue and Taxation Code.~~

6     ~~(b)~~  
 7     SECTION 1. (a) The purpose of the California Work  
 8     Opportunity Tax Credit is to encourage qualified employers to  
 9     hire *and retain* employees from targeted groups of individuals who  
 10    have systematically faced barriers to employment.

11    ~~(e)~~  
 12    (b) The Legislature finds and declares that the federal Equal  
 13    Employment Opportunity Commission (EEOC) has considered  
 14    the questions and forms required for the federal Work Opportunity  
 15    Tax Credit (WOTC) and found that the proper use of these  
 16    questions and forms, which is using them solely for purposes of  
 17    applying for the WOTC, does not violate federal equal employment  
 18    opportunity laws. Moreover, the proper use of the WOTC benefits  
 19    those that equal employment opportunity laws seek to protect.  
 20    However, despite the EEOC approving the WOTC application  
 21    forms, if an employer were to use the information for purposes  
 22    other than to apply for the WOTC, for example, to discriminate  
 23    in a hiring decision, the EEOC declared that the employer would  
 24    not be protected from liability under equal employment opportunity  
 25    laws. The Legislature further finds and declares that compliance  
 26    with the WOTC questions and forms is necessary to ensure proper  
 27    documentation and certification for employees eligible for the  
 28    credit allowed by this section.

29    SEC. 2. Section 17053.72 is added to the Revenue and Taxation  
 30    Code, to read:

31    17053.72. (a) For each taxable year beginning on or after  
 32    January 1, 2020, and before January 1, 2025, there shall be allowed  
 33    to a qualified employer as a credit against the “net tax,” as defined  
 34    in Section 17039, a California WOTC in an amount equal to an  
 35    amount determined in accordance with the requirements of the  
 36    federal WOTC, as applicable for federal tax purposes for the  
 37    taxable year, except as otherwise provided by this section.

1 (b) For purposes of this section, the following terms have the  
2 following meanings:

3 (1) “California WOTC” means the California Work Opportunity  
4 Tax Credit allowed by this section.

5 (2) “Federal WOTC” means the federal Work Opportunity Tax  
6 Credit allowed by Section 51 of the Internal Revenue Code, relating  
7 to amount of credit, as in effect on January 1, 2018.

8 (3) “Qualified employer” means a taxpayer that is an employer  
9 that is subject to, and is required to provide, unemployment  
10 insurance to the taxpayer’s employees pursuant to the  
11 Unemployment Insurance Code.

12 (4) “Qualified individual” means any person who is covered by  
13 unemployment insurance by ~~his or her~~ *the person’s* employer  
14 pursuant to the Unemployment Insurance Code.

15 (c) The federal WOTC is modified as follows:

16 (1) Section 51(a) of the Internal Revenue Code, relating to  
17 determination of amount, is modified to limit the amount of tax  
18 credit allowed so as not to exceed two thousand four hundred  
19 dollars (\$2,400) per qualified individual.

20 (2) Section 51(b) of the Internal Revenue Code, relating to  
21 qualified wages defined, is modified as follows:

22 (A) The wages are required to be attributable to an employee  
23 from a targeted group, as defined by Section 51(d) of the Internal  
24 Revenue Code, relating to members of targeted groups, and as  
25 modified by this section, who has worked not less than 500 hours  
26 for the qualified employer.

27 (B) The first five thousand dollars (\$5,000) of wages attributable  
28 to service rendered during that one-year period are excluded from  
29 the calculation of qualified wages.

30 (3) Section 51(c) of the Internal Revenue Code, relating to wages  
31 defined, is modified to exclusively apply to wages subject to  
32 withholding under Division 6 (commencing with Section 13000)  
33 of the Unemployment Insurance Code.

34 (4) Sections 51(d)(1)(D), 51(d)(1)(F), 51(d)(3)(A)(iii),  
35 51(d)(13)(D)(i)(II), and 51(d)(14) of the Internal Revenue Code  
36 shall not apply.

37 (5) Section 51(e) of the Internal Revenue Code, relating to  
38 qualified second-year wages, shall not apply.

39 (6) Section 51(g) of the Internal Revenue Code, relating to  
40 United States employment service to notify employers of

1 availability of credit, is modified to substitute “Employment  
2 Development Department, in consultation with the Franchise Tax  
3 Board” in lieu of “United States Employment Service, in  
4 consultation with the Internal Revenue Service.”

5 (7) Section 51(h) of the Internal Revenue Code, relating to  
6 special rules for agricultural labor and railway labor, shall not  
7 apply.

8 (8) Section 51(i)(3) of the Internal Revenue Code, relating to  
9 individuals not meeting minimum employment periods, shall not  
10 apply.

11 (9) Section 51(j) of the Internal Revenue Code, relating to  
12 election to have work opportunity not apply, is modified to  
13 substitute “last date prescribed by state law” in lieu of “last date  
14 prescribed by law.”

15 (d) (1) Notwithstanding the federal WOTC, the qualified  
16 employer shall be allowed the California WOTC in the taxable  
17 year in which the employer receives a certification or in the taxable  
18 year in which the qualified employer paid or incurred the qualified  
19 first year wages.

20 (2) Consistent with the requirements of the federal WOTC, the  
21 Employment Development Department shall issue certification of  
22 qualified individuals, ~~subject to the modifications provided by this~~  
23 ~~section.~~ *individuals.*

24 (e) Notwithstanding the federal WOTC, in the case where the  
25 California WOTC exceeds the “net tax,” the excess may be carried  
26 over to reduce the “net tax” in the following taxable year, and  
27 succeeding nine years if necessary, until the California WOTC is  
28 exhausted.

29 (f) Any deduction otherwise allowed under this part for the  
30 qualified wages paid or incurred by the taxpayer upon which the  
31 California WOTC is based shall be reduced by the amount of the  
32 California WOTC allowed by this section.

33 (g) (1) Upon the effective date of this section, the Department  
34 of Finance shall estimate the total dollar amount of credits that  
35 will be claimed under this section with respect to each tax year  
36 from 2019–20 fiscal year to the 2025–26 fiscal year, inclusive.

37 (2) The Franchise Tax Board shall annually provide to the Joint  
38 Legislative Budget Committee, by no later than March 1, a report,  
39 in accordance with Section 9795 of the Government Code, that  
40 includes all of the following:

1 (A) The total dollar amount of the credits claimed under this  
2 section with respect to the relevant fiscal year. The report shall  
3 compare the total dollar amount of credits claimed under this  
4 section with respect to that fiscal year with the department's  
5 estimate with respect to that same fiscal year.

6 (B) The number of tax returns claiming the credit.

7 (C) The number of qualified individuals represented on tax  
8 returns claiming the credit.

9 (h) No credit shall be allowed pursuant to this section for a  
10 qualified employee unless the qualified employer obtains a  
11 certification from the Employment Development Department for  
12 that qualified employee for the Work Opportunity Tax Credit  
13 allowed by Section 51 of the Internal Revenue Code.

14 (i) ~~(H)~~ This section shall remain in effect only until December  
15 1, 2035, and as of that date is repealed.

16 ~~(2) Notwithstanding paragraph (1), this section shall continue~~  
17 ~~to be operative for taxable years beginning on or after January 1,~~  
18 ~~2019, but only with respect to qualified individuals who~~  
19 ~~commenced employment with a qualified taxpayer in a taxable~~  
20 ~~year beginning before January 1, 2025.~~

21 SEC. 3. Section 23672 is added to the Revenue and Taxation  
22 Code, to read:

23 23672. (a) For each taxable year beginning on or after January  
24 1, 2020, and before January 1, 2025, there shall be allowed to a  
25 qualified employer as a credit against the "tax," as defined in  
26 Section 23036, a California WOTC in an amount equal to an  
27 amount determined in accordance with the requirements of the  
28 federal WOTC, as applicable for federal tax purposes for the  
29 taxable year, except as otherwise provided by this section.

30 (b) For purposes of this section, the following terms have the  
31 following meanings:

32 (1) "California WOTC" means the California Work Opportunity  
33 Tax Credit allowed by this section.

34 (2) "Federal WOTC" means the federal Work Opportunity Tax  
35 Credit allowed by Section 51 of the Internal Revenue Code, relating  
36 to amount of credit, as in effect on January 1, 2018.

37 (3) "Qualified employer" means a taxpayer that is an employer  
38 that is subject to, and is required to provide, unemployment  
39 insurance to the taxpayer's employees pursuant to the  
40 Unemployment Insurance Code.

1 (4) “Qualified individual” means any person who is covered by  
2 unemployment insurance by ~~his or her~~ *the person’s* employer  
3 pursuant to the Unemployment Insurance Code.

4 (c) The federal WOTC is modified as follows:

5 (1) Section 51(a) of the Internal Revenue Code, relating to  
6 determination of amount, is modified to limit the amount of tax  
7 credit allowed so as not to exceed two thousand four hundred  
8 dollars (\$2,400) per qualified individual.

9 (2) Section 51(b) of the Internal Revenue Code, relating to  
10 qualified wages defined, is modified as follows:

11 (A) The wages are required to be attributable to an employee  
12 from a targeted group, as defined by Section 51(d) of the Internal  
13 Revenue Code, relating to members of targeted groups, and as  
14 modified by this section, who has worked not less than 500 hours  
15 for the qualified employer.

16 (B) The first five thousand dollars (\$5,000) of wages attributable  
17 to service rendered during that one-year period are excluded from  
18 the calculation of qualified wages.

19 (3) Section 51(c) of the Internal Revenue Code, relating to wages  
20 defined, is modified to exclusively apply to wages subject to  
21 withholding under Division 6 (commencing with Section 13000)  
22 of the Unemployment Insurance Code.

23 (4) Sections 51(d)(1)(D), 51(d)(1)(F), 51(d)(3)(A)(iii),  
24 51(d)(13)(D)(i)(II), and 51(d)(14) of the Internal Revenue Code  
25 shall not apply.

26 (5) Section 51(e) of the Internal Revenue Code, relating to  
27 qualified second-year wages, shall not apply.

28 (6) Section 51(g) of the Internal Revenue Code, relating to  
29 United States employment service to notify employers of  
30 availability of credit, is modified to substitute “Employment  
31 Development Department, in consultation with the Franchise Tax  
32 Board” in lieu of “United States Employment Service, in  
33 consultation with the Internal Revenue Service.”

34 (7) Section 51(h) of the Internal Revenue Code, relating to  
35 special rules for agricultural labor and railway labor, shall not  
36 apply.

37 (8) Section 51(i)(3) of the Internal Revenue Code, relating to  
38 individuals not meeting minimum employment periods, shall not  
39 apply.

1 (9) Section 51(j) of the Internal Revenue Code, relating to  
2 election to have work opportunity not apply, is modified to  
3 substitute “last date prescribed by state law” in lieu of “last date  
4 prescribed by law.”

5 (d) (1) Notwithstanding the federal WOTC, the qualified  
6 employer shall be allowed the California WOTC in the taxable  
7 year in which the employer receives a certification or in the taxable  
8 year in which the qualified employer paid or incurred the qualified  
9 first year wages.

10 (2) Consistent with the requirements of the federal WOTC, the  
11 Employment Development Department shall issue certification of  
12 qualified ~~individuals, subject to the modifications provided by this~~  
13 ~~section.~~ *individuals.*

14 (e) Notwithstanding the federal WOTC, in the case where the  
15 California WOTC exceeds the “tax,” the excess may be carried  
16 over to reduce the “tax” in the following taxable year, and  
17 succeeding nine years if necessary, until the California WOTC is  
18 exhausted.

19 (f) Any deduction otherwise allowed under this part for the  
20 qualified wages paid or incurred by the taxpayer upon which the  
21 California WOTC is based shall be reduced by the amount of the  
22 California WOTC allowed by this section.

23 (g) (1) Upon the effective date of this section, the Department  
24 of Finance shall estimate the total dollar amount of credits that  
25 will be claimed under this section with respect to each tax year  
26 from 2019–20 fiscal year to the 2025–26 fiscal year, inclusive.

27 (2) The Franchise Tax Board shall annually provide to the Joint  
28 Legislative Budget Committee, by no later than March 1, a report,  
29 in accordance with Section 9795 of the Government Code, that  
30 includes all of the following:

31 (A) The total dollar amount of the credits claimed under this  
32 section with respect to the relevant fiscal year. The report shall  
33 compare the total dollar amount of credits claimed under this  
34 section with respect to that fiscal year with the department’s  
35 estimate with respect to that same fiscal year.

36 (B) The number of tax returns claiming the credit.

37 (C) The number of qualified individuals represented on tax  
38 returns claiming the credit.

39 (h) No credit shall be allowed pursuant to this section for a  
40 qualified employee unless the qualified employer obtains a

1 certification from the Employment Development Department for  
 2 that qualified employee for the Work Opportunity Tax Credit  
 3 allowed by Section 51 of the Internal Revenue Code.

4 (i) ~~(1)~~ This section shall remain in effect only until December  
 5 1, 2035, and as of that date is repealed.

6 ~~(2) Notwithstanding paragraph (1), this section shall continue~~  
 7 ~~to be operative for taxable years beginning on or after January 1,~~  
 8 ~~2019, but only with respect to qualified individuals who~~  
 9 ~~commenced employment with a qualified taxpayer in a taxable~~  
 10 ~~year beginning before January 1, 2025.~~

11 SEC. 4. (a) In accordance with Section 41 of the Revenue and  
 12 Taxation Code, the purpose of the California Work Opportunity  
 13 Credit, as added to the Revenue and Taxation Code by Sections  
 14 17053.72 and 23672 of this bill, is to encourage employers to hire  
 15 *and retain* individuals from targeted groups which have been found  
 16 to face systemic barriers to employment. To measure whether the  
 17 credit achieves its intended purpose the Employment Development  
 18 Department shall annually prepare a written report on the  
 19 following:

20 (1) The number of employers, based on employer IDs, who filed  
 21 for certification.

22 (2) The number and percentage of employees for which  
 23 certification was granted.

24 (3) The distribution of newly hired employees over the eight  
 25 eligible targeted groups.

26 (4) The distribution of employers based on industry sectors.

27 (5) The distribution of employees based on industry sectors.

28 (b) On or before October 1, 2020, and annually thereafter while  
 29 Sections 17053.72 and 23672 of the Revenue and Taxation Code  
 30 are in effect, the Employment Development Department shall post  
 31 on its ~~Internet Web site~~ *internet website* the written report required  
 32 by subdivision (a). A letter indicating that the report is posted shall  
 33 be delivered to the Assembly and Senate Desks within four  
 34 calendar days of the report being posted on the website of the  
 35 Employment Development Department. The Assembly and Senate  
 36 Desks shall distribute the notice, as the respective Desk deems  
 37 appropriate.



1     SEC. 5. This act provides for a tax levy within the meaning  
2 of Article IV of the California Constitution and shall go into  
3 immediate effect.

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