



SB-313 California Competes tax credit: refunds. (2021-2022)

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CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

SENATE BILL

NO. 313

Introduced by Senator Durazo

February 04, 2021

An act to amend Sections 17059.2 and 23689 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 313, as introduced, Durazo. California Competes tax credit: refunds.

The Personal Income Tax Law and the Corporation Tax Law allow a credit (CalCompetes tax credit) against the taxes imposed under those laws, for each taxable year beginning on and after January 1, 2014, and before January 1, 2030, in an amount as provided in a written agreement between the Governor's Office of Business and Economic Development and the taxpayer, approved by the California Competes Tax Credit Committee, and based on specified factors, including the number of jobs the taxpayer will create or retain in the state and the amount of investment in the state by the taxpayer. Existing law establishes the continuously appropriated Tax Relief and Refund Account and provides that specified payments required to be made to taxpayers, including refunds, are to be paid from that account.

This bill, for taxable years beginning on or after January 1, 2022, would allow a qualified taxpayer, to the extent a CalCompetes tax credit amount exceeds a qualified taxpayer's tax liability for the taxable year, as specified, to elect to be paid a refund from the Tax Relief and Refund Account, not to exceed the amount of total taxes imposed by the state and paid by the qualified taxpayer during the taxable year. The bill would define a "qualified taxpayer" as a taxpayer that has created at least 5,000 prevailing wage, full-time or full-time equivalent jobs in the state each year for a period of 10 years. The bill would require a qualified taxpayer that receives a refund to reinvest the refund into immobile capital equipment that supports infrastructure improvements, expansion, or developments for media production facilities in the state, as provided.

By authorizing new refund payments to be paid from the continuously appropriated Tax Relief and Refund Account, this bill would make an appropriation.

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17059.2 of the Revenue and Taxation Code is amended to read:

17059.2. (a) (1) For each taxable year beginning on and after January 1, 2014, and before January 1, 2030, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount as determined by the committee pursuant to paragraph (2) and approved pursuant to Section 18410.2.

(2) The credit under this section shall be allocated by GO-Biz with respect to the 2013–14 fiscal year through and including the 2022–23 fiscal year. The amount of credit allocated to a taxpayer with respect to a fiscal year pursuant to this section shall be as set forth in a written agreement between GO-Biz and the taxpayer and shall be based on the following factors:

(A) The number of jobs the taxpayer will create or retain in this state.

(B) The compensation paid or proposed to be paid by the taxpayer to its employees, including wages and fringe benefits.

(C) The amount of investment in this state by the taxpayer.

(D) The extent of unemployment or poverty in the area according to the United States Census in which the taxpayer's project or business is proposed or located.

(E) The incentives available to the taxpayer in this state, including incentives from the state, local government, and other entities.

(F) The incentives available to the taxpayer in other states.

(G) The duration of the proposed project and the duration the taxpayer commits to remain in this state.

(H) The overall economic impact in this state of the taxpayer's project or business.

(I) The strategic importance of the taxpayer's project or business to the state, region, or locality.

(J) The opportunity for future growth and expansion in this state by the taxpayer's business.

(K) The extent to which the anticipated benefit to the state exceeds the projected benefit to the taxpayer from the tax credit.

(L) For a credit allocated beginning with the 2018–19 fiscal year, the training opportunities offered by the taxpayer to its employees.

(3) The written agreement entered into pursuant to paragraph (2) shall include:

(A) Terms and conditions that include the taxable year or years for which the credit allocated shall be allowed, a minimum compensation level, and a minimum job retention period.

(B) Provisions indicating whether the credit is to be allocated in full upon approval or in increments based on mutually agreed upon milestones when satisfactorily met by the taxpayer.

(C) Provisions that allow the committee to recapture the credit, in whole or in part, if the taxpayer fails to fulfill the terms and conditions of the written agreement.

(b) (1) For taxable years beginning on or after January 1, 2022, a qualified taxpayer, to the extent an amount allowable under this section exceeds the tax liability computed under this part for the taxable year, and after being credited against other amounts due, if any, may elect to be paid a refund from the Tax Relief and Refund Account. The amount refunded under this subdivision, if any, shall not exceed the amount of total taxes imposed by the state and paid by the qualified taxpayer during the taxable year.

(2) To be eligible for a refund of the credit allowed by this section, the qualified taxpayer shall, upon request, provide necessary information, including certification from GO-Biz that the taxpayer is a qualified taxpayer, as determined by and in the form and manner prescribed by the Franchise Tax Board.

(3) Subdivision (f) shall apply if a qualified taxpayer does not elect to be paid a refund pursuant to this subdivision or if there are excess credits available after the refund is provided pursuant to this subdivision.

(4) A qualified taxpayer that receives a refund pursuant to this subdivision shall reinvest the refund into immobile capital equipment that supports infrastructure improvements, expansion, or developments for media production facilities in the state. A qualified taxpayer shall not reinvest refunds for the improvement of immobile capital equipment unless the improvements are made under a project labor agreement and using a skilled and trained workforce.

(5) For purposes of this subdivision, the following shall apply:

(A) "Qualified taxpayer" means a taxpayer that has created at least 5,000 prevailing wage, full-time or full-time equivalent jobs in the state each year for a period of 10 years.

(B) "Full-time equivalent" means the workload of the full-time equivalent job is comparable to one year of full-time work. One year of full-time work is measurable by the number of hours worked in one year, or by total wages paid in one year for that industry divided by the average annual salary.

(C) "Immobile capital equipment" means property of the type defined in Section 1250(c) of the Internal Revenue Code.

(D) "Project labor agreement" has the same meaning as defined in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(E) "Skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(6) (A) The Franchise Tax Board may prescribe any regulations necessary or appropriate to carry out the purposes of this subdivision, including any regulations to prevent improper claims from being filed or improper payments from being made with respect to the refund of the credit.

(B) The Franchise Tax Board may prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of this subdivision.

(C) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any regulation, rule, guideline, procedure, or other guidance prescribed by the Franchise Tax Board pursuant to this subdivision.

~~(b)~~

(c) For purposes of this section:

(1) "Committee" means the California Competes Tax Credit Committee established pursuant to Section 18410.2.

(2) "GO-Biz" means the Governor's Office of Business and Economic Development.

~~(c)~~

(d) For purposes of this section, GO-Biz shall do the following:

(1) Give priority to a taxpayer whose project or business is located or proposed to be located in an area of high unemployment or poverty.

(2) Negotiate with a taxpayer the terms and conditions of proposed written agreements that provide the credit allowed pursuant to this section to a taxpayer.

(3) Provide the negotiated written agreement to the committee for its approval pursuant to Section 18410.2.

(4) Inform the Franchise Tax Board of the terms and conditions of the written agreement upon approval of the written agreement by the committee.

(5) Inform the Franchise Tax Board of any recapture, in whole or in part, of a previously allocated credit upon approval of the recapture by the committee.

(6) Post on its ~~Internet Web site~~ [internet website](#) all of the following:

(A) The name of each taxpayer allocated a credit pursuant to this section.

(B) The estimated amount of the investment by each taxpayer.

(C) The estimated number of jobs created or retained.

(D) The amount of the credit allocated to the taxpayer.

(E) The amount of the credit recaptured from the taxpayer, if applicable.

(F) The primary location where the taxpayer has committed to increasing the net number of jobs or make investments. The primary location shall be listed by city or, in the case of unincorporated areas, by county.

(G) Information that identifies each tax credit award that was given a priority for being located in a high unemployment or poverty area, pursuant to paragraph (1).

(7) For allocation periods beginning with the 2018–19 fiscal year, when determining whether to enter into a written agreement with a taxpayer pursuant to this section, GO-Biz shall consider the extent to which the credit will influence the taxpayer’s ability, willingness, or both, to create jobs in this state that might not otherwise be created in the state by the taxpayer or any other taxpayer. GO-Biz may also consider other factors, including, but not limited to, the following:

(A) The financial solvency of the taxpayer and the taxpayer’s ability to finance its proposed expansion.

(B) The taxpayer’s current and prior compliance with federal and state laws.

(C) Current and prior litigation involving the taxpayer.

(D) The reasonableness of the fee arrangement between the taxpayer and any third party providing any services related to the credit allowed pursuant to this section.

(E) Any other factors GO-Biz deems necessary to ensure that the administration of the credit allowed pursuant to this section is a model of accountability and transparency and that the effective use of the limited amount of credit available is maximized.

~~(d)~~

(e) For purposes of this section, the Franchise Tax Board shall do all of the following:

(1) (A) Except as provided in subparagraph (B), review the books and records of all taxpayers allocated a credit pursuant to this section to ensure compliance with the terms and conditions of the written agreement between the taxpayer and GO-Biz.

(B) In the case of a taxpayer that is a “small business,” as defined in Section 17053.73, review the books and records of the taxpayer allocated a credit pursuant to this section to ensure compliance with the terms and conditions of the written agreement between the taxpayer and GO-Biz when, in the sole discretion of the Franchise Tax Board, a review of those books and records is appropriate or necessary in the best interests of the state.

(2) Notwithstanding Section 19542, notify GO-Biz of a possible breach of the written agreement by a taxpayer and provide detailed information regarding the basis for that determination.

~~(e)~~

(f) In the case where the credit allowed under this section exceeds the “net tax,” as defined in Section 17039, for a taxable year, the excess credit may be carried over to reduce the “net tax” in the following taxable year, and succeeding five taxable years, if necessary, until the credit has been exhausted.

~~(f)~~

(g) Any recapture, in whole or in part, of a credit approved by the committee pursuant to Section 18410.2 shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from that recapture shall be assessed by the Franchise Tax Board in the same manner as provided by Section 19051. The amount of tax resulting from the recapture shall be added to the tax otherwise due by the taxpayer for the taxable year in which the committee’s recapture determination occurred.

~~(g)~~

(h) (1) The aggregate amount of credit that may be allocated in any fiscal year pursuant to this section and Section 23689 shall be an amount equal to the sum of subparagraphs (A), (B), and (C), less the amount

specified in subparagraphs (D) and (E):

(A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal year, one hundred fifty million dollars (\$150,000,000) for the 2014–15 fiscal year, two hundred million dollars (\$200,000,000) for each fiscal year from 2015–16 to 2017–18, inclusive, and one hundred eighty million dollars (\$180,000,000) for each fiscal year from 2018–19 to 2022–23, inclusive.

(B) The unallocated credit amount, if any, from the preceding fiscal year.

(C) The amount of any previously allocated credits that have been recaptured.

(D) The amount estimated by the Director of Finance, in consultation with the Franchise Tax Board and the California Department of Tax and Fee Administration, to be necessary to limit the aggregation of the estimated amount of exemptions claimed pursuant to Section 6377.1 and of the amounts estimated to be claimed pursuant to this section and Sections 17053.73, 23626, and 23689 to no more than seven hundred fifty million dollars (\$750,000,000) for either the current fiscal year or the next fiscal year.

(i) The Director of Finance shall notify the Chairperson of the Joint Legislative Budget Committee of the estimated annual allocation authorized by this paragraph. Any allocation pursuant to these provisions shall be made no sooner than 30 days after written notification has been provided to the Chairperson of the Joint Legislative Budget Committee and the chairpersons of the committees of each house of the Legislature that consider appropriations, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee, or ~~his or her~~ *the chairperson's* designee, may determine.

(ii) In no event shall the amount estimated in this subparagraph be less than zero dollars (\$0).

(E) (i) For the 2015–16 fiscal year and each fiscal year thereafter, the amount of credit estimated by the Director of Finance to be allowed to all qualified taxpayers for that fiscal year pursuant to subparagraph (A) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 23636.

(ii) If the amount available per fiscal year pursuant to this section and Section 23689 is less than the aggregate amount of credit estimated by the Director of Finance to be allowed to qualified taxpayers pursuant to subparagraph (A) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 23636, the aggregate amount allowed pursuant to Section 23636 shall not be reduced and, in addition to the reduction required by clause (i), the aggregate amount of credit that may be allocated pursuant to this section and Section 23689 for the next fiscal year shall be reduced by the amount of that deficit.

(iii) It is the intent of the Legislature that the reductions specified in this subparagraph of the aggregate amount of credit that may be allocated pursuant to this section and Section 23689 shall continue if the repeal dates of the credits allowed by this section and Section 23689 are removed or extended.

(2) (A) In addition to the other amounts determined pursuant to paragraph (1), the Director of Finance may increase the aggregate amount of credit that may be allocated pursuant to this section and Section 23689 by up to twenty-five million dollars (\$25,000,000) per fiscal year through the 2022–23 fiscal year. The amount of any increase made pursuant to this paragraph, when combined with any increase made pursuant to paragraph (2) of subdivision ~~(g)~~ *(h)* of Section 23689, shall not exceed twenty-five million dollars (\$25,000,000) per fiscal year through the 2022–23 fiscal year.

(B) It is the intent of the Legislature that the Director of Finance increase the aggregate amount under subparagraph (A) in order to mitigate the reduction of the amount available due to the credit allowed to all qualified taxpayers pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (c) of Section 23636.

(3) Each fiscal year through the 2017–18 fiscal year, 25 percent of the aggregate amount of the credit that may be allocated pursuant to this section and Section 23689 shall be reserved for small business, as defined in Section 17053.73 or 23626.

(4) Each fiscal year, no more than 20 percent of the aggregate amount of the credit that may be allocated pursuant to this section shall be allocated to any one taxpayer.

~~(h)~~

(i) GO-Biz may prescribe rules and regulations as necessary to carry out the purposes of this section. Any rule or regulation prescribed pursuant to this section may be by adoption of an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

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(j) A written agreement between GO-Biz and a taxpayer with respect to the credit authorized by this section shall comply with existing law on the date the agreement is executed.

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(k) (1) Upon the effective date of this section, the Department of Finance shall estimate the total dollar amount of credits that will be claimed under this section with respect to each fiscal year from the 2013–14 fiscal year to the 2029–30 fiscal year, inclusive.

(2) The Franchise Tax Board shall annually provide to the Joint Legislative Budget Committee, by no later than March 1, a report of the total dollar amount of the credits claimed under this section with respect to the relevant fiscal year. The report shall compare the total dollar amount of credits claimed under this section with respect to that fiscal year with the department's estimate with respect to that same fiscal year. If the total dollar amount of credits claimed for the fiscal year is less than the estimate for that fiscal year, the report shall identify options for increasing annual claims of the credit so as to meet estimated amounts.

(+)

(l) (1) Notwithstanding Section 19542, on or before October 1, 2019, GO-Biz shall provide to the Legislative Analyst's Office a report on the credits allocated pursuant to this section for the 2018–19 fiscal year. This report shall include the following:

(A) A detailed description of the methodology used to evaluate applications and allocate credits as described by Section 8030 of Title 10 of the California Code of Regulations, or any successor regulation.

(B) For each taxpayer that applies for a credit, a list that includes the applicant's name, "aggregate employee compensation," "aggregate investment," and "cost-benefit ratio" as those terms are defined for purposes of, or used in, Section 8030 of Title 10 of the California Code of Regulations.

(C) For each written agreement recommended to the committee pursuant to this section, a detailed justification for GO-Biz's decision to enter into a written agreement with the taxpayer.

(2) (A) On or before April 1, 2020, the Legislative Analyst's Office shall provide to the Assembly Committee on Revenue and Taxation, the Senate Committee on Governance and Finance, the budget committees of both houses, and the public with a report evaluating the report required by paragraph (1).

(B) GO-Biz, the Franchise Tax Board, and all other relevant state agencies shall provide additional information, as specified by the Legislative Analyst's Office, as needed to research the reports required by this subdivision.

(C) Any information received by the Legislative Analyst's Office pursuant to this subdivision, that has not otherwise been made public, shall be considered confidential taxpayer information subject to Section 19542.

(D) The Legislative Analyst's Office may publish statistics in conjunction with the reports required by this subdivision that are derived from information provided to the Legislative Analyst's Office pursuant to this section, if the published statistics are aggregated to prevent the identification of particular taxpayers under this part.

(+)

(m) This section is repealed on December 1, 2030.

SEC. 2. Section 23689 of the Revenue and Taxation Code is amended to read:

23689. (a) (1) For each taxable year beginning on and after January 1, 2014, and before January 1, 2030, there shall be allowed as a credit against the "tax," as defined in Section 23036, an amount as determined by the committee pursuant to paragraph (2) and approved pursuant to Section 18410.2.

(2) The credit under this section shall be allocated by GO-Biz with respect to the 2013–14 fiscal year through and including the 2022–23 fiscal year. The amount of credit allocated to a taxpayer with respect to a fiscal year pursuant to this section shall be as set forth in a written agreement between GO-Biz and the taxpayer and shall be based on the following factors:

(A) The number of jobs the taxpayer will create or retain in this state.

(B) The compensation paid or proposed to be paid by the taxpayer to its employees, including wages and fringe benefits.

(C) The amount of investment in this state by the taxpayer.

(D) The extent of unemployment or poverty in the area according to the United States Census in which the taxpayer's project or business is proposed or located.

(E) The incentives available to the taxpayer in this state, including incentives from the state, local government, and other entities.

(F) The incentives available to the taxpayer in other states.

(G) The duration of the proposed project and the duration the taxpayer commits to remain in this state.

(H) The overall economic impact in this state of the taxpayer's project or business.

(I) The strategic importance of the taxpayer's project or business to the state, region, or locality.

(J) The opportunity for future growth and expansion in this state by the taxpayer's business.

(K) The extent to which the anticipated benefit to the state exceeds the projected benefit to the taxpayer from the tax credit.

(L) For a credit allocated beginning with the 2018-19 fiscal year, the training opportunities offered by the taxpayer to its employees.

(3) The written agreement entered into pursuant to paragraph (2) shall include:

(A) Terms and conditions that include the taxable year or years for which the credit allocated shall be allowed, a minimum compensation level, and a minimum job retention period.

(B) Provisions indicating whether the credit is to be allocated in full upon approval or in increments based on mutually agreed upon milestones when satisfactorily met by the taxpayer.

(C) Provisions that allow the committee to recapture the credit, in whole or in part, if the taxpayer fails to fulfill the terms and conditions of the written agreement.

(b) (1) For taxable years beginning on or after January 1, 2022, a qualified taxpayer, to the extent an amount allowable under this section exceeds the tax liability computed under this part for the taxable year, and after being credited against other amounts due, if any, may elect to be paid a refund from the Tax Relief and Refund Account. The amount refunded under this subdivision, if any, shall not exceed the amount of total taxes imposed by the state and paid by the qualified taxpayer during the taxable year.

(2) To be eligible for a refund of the credit allowed by this section, the qualified taxpayer shall, upon request, provide necessary information, including certification from GO-Biz that the taxpayer is a qualified taxpayer, as determined by and in the form and manner prescribed by the Franchise Tax Board.

(3) Subdivision (f) shall apply if a qualified taxpayer does not elect to be paid a refund pursuant to this subdivision or if there are excess credits available after the refund is provided pursuant to this subdivision.

(4) A qualified taxpayer that receives a refund pursuant to this subdivision shall reinvest the refund into immobile capital equipment that supports infrastructure improvements, expansion, or developments for media production facilities in the state. A qualified taxpayer shall not reinvest refunds for the improvement of immobile capital equipment unless the improvements are made under a project labor agreement and using a skilled and trained workforce.

(5) For purposes of this subdivision, the following shall apply:

(A) "Qualified taxpayer" means a taxpayer that has created at least 5,000 prevailing wage, full-time or full-time equivalent jobs in the state each year for a period of 10 years.

(B) "Full-time equivalent" means the workload of the full-time equivalent job is comparable to one year of full-time work. One year of full-time work is measurable by the number of hours worked in one year, or by total wages paid in one year for that industry divided by the average annual salary.

(C) "Immobile capital equipment" means property of the type defined in Section 1250(c) of the Internal Revenue Code.

(D) "Project labor agreement" has the same meaning as defined in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(E) "Skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(6) (A) The Franchise Tax Board may prescribe any regulations necessary or appropriate to carry out the purposes of this subdivision, including any regulations to prevent improper claims from being filed or improper payments from being made with respect to the refund of the credit.

(B) The Franchise Tax Board may prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of this subdivision.

(C) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any regulation, rule, guideline, procedure, or other guidance prescribed by the Franchise Tax Board pursuant to this subdivision.

~~(b)~~

(c) For purposes of this section:

(1) "Committee" means the California Competes Tax Credit Committee established pursuant to Section 18410.2.

(2) "GO-Biz" means the Governor's Office of Business and Economic Development.

~~(e)~~

(d) For purposes of this section, GO-Biz shall do the following:

(1) Give priority to a taxpayer whose project or business is located or proposed to be located in an area of high unemployment or poverty.

(2) Negotiate with a taxpayer the terms and conditions of proposed written agreements that provide the credit allowed pursuant to this section to a taxpayer.

(3) Provide the negotiated written agreement to the committee for its approval pursuant to Section 18410.2.

(4) Inform the Franchise Tax Board of the terms and conditions of the written agreement upon approval of the written agreement by the committee.

(5) Inform the Franchise Tax Board of any recapture, in whole or in part, of a previously allocated credit upon approval of the recapture by the committee.

(6) Post on its ~~Internet Web site~~ [internet website](#) all of the following:

(A) The name of each taxpayer allocated a credit pursuant to this section.

(B) The estimated amount of the investment by each taxpayer.

(C) The estimated number of jobs created or retained.

(D) The amount of the credit allocated to the taxpayer.

(E) The amount of the credit recaptured from the taxpayer, if applicable.

(F) The primary location where the taxpayer has committed to increasing the net number of jobs or make investments. The primary location shall be listed by city or, in the case of unincorporated areas, by county.

(G) Information that identifies each tax credit award that was given a priority for being located in a high unemployment or poverty area, pursuant to paragraph (1).

(7) For allocation periods beginning with the 2018-19 fiscal year, when determining whether to enter into a written agreement with a taxpayer pursuant to this section, GO-Biz shall consider the extent to which the credit will influence the taxpayer's ability, willingness, or both, to create jobs in this state that might not otherwise be

created in the state by the taxpayer or any other taxpayer. GO-Biz may also consider other factors, including, but not limited to, the following:

- (A) The financial solvency of the taxpayer and the taxpayer's ability to finance its proposed expansion.
- (B) The taxpayer's current and prior compliance with federal and state laws.
- (C) Current and prior litigation involving the taxpayer.
- (D) The reasonableness of the fee arrangement between the taxpayer and any third party providing any services related to the credit allowed pursuant to this section.
- (E) Any other factors GO-Biz deems necessary to ensure that the administration of the credit allowed pursuant to this section is a model of accountability and transparency and that the effective use of the limited amount of credit available is maximized.

~~(d)~~

(e) For purposes of this section, the Franchise Tax Board shall do all of the following:

(1) (A) Except as provided in subparagraph (B), review the books and records of all taxpayers allocated a credit pursuant to this section to ensure compliance with the terms and conditions of the written agreement between the taxpayer and GO-Biz.

(B) In the case of a taxpayer that is a "small business," as defined in Section 23626, review the books and records of the taxpayer allocated a credit pursuant to this section to ensure compliance with the terms and conditions of the written agreement between the taxpayer and GO-Biz when, in the sole discretion of the Franchise Tax Board, a review of those books and records is appropriate or necessary in the best interests of the state.

(2) Notwithstanding Section 19542, notify GO-Biz of a possible breach of the written agreement by a taxpayer and provide detailed information regarding the basis for that determination.

~~(e)~~

(f) In the case where the credit allowed under this section exceeds the "tax," as defined in Section 23036, for a taxable year, the excess credit may be carried over to reduce the "tax" in the following taxable year, and succeeding five taxable years, if necessary, until the credit has been exhausted.

~~(f)~~

(g) Any recapture, in whole or in part, of a credit approved by the committee pursuant to Section 18410.2 shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from that recapture shall be assessed by the Franchise Tax Board in the same manner as provided by Section 19051. The amount of tax resulting from the recapture shall be added to the tax otherwise due by the taxpayer for the taxable year in which the committee's recapture determination occurred.

~~(g)~~

(h) (1) The aggregate amount of credit that may be allocated in any fiscal year pursuant to this section and Section 17059.2 shall be an amount equal to the sum of subparagraphs (A), (B), and (C), less the amount specified in subparagraphs (D) and (E):

(A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal year, one hundred fifty million dollars (\$150,000,000) for the 2014–15 fiscal year, two hundred million dollars (\$200,000,000) for each fiscal year from 2015–16 to 2017–18, inclusive, and one hundred eighty million dollars (\$180,000,000) for each fiscal year from 2018–19 to 2022–23, inclusive.

(B) The unallocated credit amount, if any, from the preceding fiscal year.

(C) The amount of any previously allocated credits that have been recaptured.

(D) The amount estimated by the Director of Finance, in consultation with the Franchise Tax Board and the California Department of Tax and Fee Administration, to be necessary to limit the aggregation of the estimated amount of exemptions claimed pursuant to Section 6377.1 and of the amounts estimated to be claimed pursuant

to this section and Sections 17053.73, 17059.2, and 23626 to no more than seven hundred fifty million dollars (\$750,000,000) for either the current fiscal year or the next fiscal year.

(i) The Director of Finance shall notify the Chairperson of the Joint Legislative Budget Committee of the estimated annual allocation authorized by this paragraph. Any allocation pursuant to these provisions shall be made no sooner than 30 days after written notification has been provided to the Chairperson of the Joint Legislative Budget Committee and the chairpersons of the committees of each house of the Legislature that consider appropriations, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee, or ~~his or her~~ *the chairperson's* designee, may determine.

(ii) In no event shall the amount estimated in this subparagraph be less than zero dollars (\$0).

(E) (i) For the 2015–16 fiscal year and each fiscal year thereafter, the amount of credit estimated by the Director of Finance to be allowed to all qualified taxpayers for that fiscal year pursuant to subparagraph (A) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 23636.

(ii) If the amount available per fiscal year pursuant to this section and Section 17059.2 is less than the aggregate amount of credit estimated by the Director of Finance to be allowed to qualified taxpayers pursuant to subparagraph (A) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 23636, the aggregate amount allowed pursuant to Section 23636 shall not be reduced and, in addition to the reduction required by clause (i), the aggregate amount of credit that may be allocated pursuant to this section and Section 17059.2 for the next fiscal year shall be reduced by the amount of that deficit.

(iii) It is the intent of the Legislature that the reductions specified in this subparagraph of the aggregate amount of credit that may be allocated pursuant to this section and Section 17059.2 shall continue if the repeal dates of the credits allowed by this section and Section 17059.2 are removed or extended.

(2) (A) In addition to the other amounts determined pursuant to paragraph (1), the Director of Finance may increase the aggregate amount of credit that may be allocated pursuant to this section and Section 17059.2 by up to twenty-five million dollars (\$25,000,000) per fiscal year through the 2022–23 fiscal year. The amount of any increase made pursuant to this paragraph, when combined with any increase made pursuant to paragraph (2) of subdivision ~~(g)~~ *(h)* of Section 17059.2, shall not exceed twenty-five million dollars (\$25,000,000) per fiscal year through the 2022–23 fiscal year.

(B) It is the intent of the Legislature that the Director of Finance increase the aggregate amount under subparagraph (A) in order to mitigate the reduction of the amount available due to the credit allowed to all qualified taxpayers pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (c) of Section 23636.

(3) Each fiscal year through the 2017–18 fiscal year, 25 percent of the aggregate amount of the credit that may be allocated pursuant to this section and Section 17059.2 shall be reserved for “small business,” as defined in Section 17053.73 or 23626.

(4) Each fiscal year, no more than 20 percent of the aggregate amount of the credit that may be allocated pursuant to this section shall be allocated to any one taxpayer.

~~(h)~~

(i) GO-Biz may prescribe rules and regulations as necessary to carry out the purposes of this section. Any rule or regulation prescribed pursuant to this section may be by adoption of an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(i)~~

(j) (1) A written agreement between GO-Biz and a taxpayer with respect to the credit authorized by this section shall not restrict, broaden, or otherwise alter the ability of the taxpayer to assign that credit or any portion thereof in accordance with Section 23663.

(2) A written agreement between GO-Biz and a taxpayer with respect to the credit authorized by this section must comply with existing law on the date the agreement is executed.

~~(j)~~

(k) (1) Upon the effective date of this section, the Department of Finance shall estimate the total dollar amount of credits that will be claimed under this section with respect to each fiscal year from the 2013–14 fiscal year to the 2029–30 fiscal year, inclusive.

(2) The Franchise Tax Board shall annually provide to the Joint Legislative Budget Committee, by no later than March 1, a report of the total dollar amount of the credits claimed under this section with respect to the relevant fiscal year. The report shall compare the total dollar amount of credits claimed under this section with respect to that fiscal year with the department's estimate with respect to that same fiscal year. If the total dollar amount of credits claimed for the fiscal year is less than the estimate for that fiscal year, the report shall identify options for increasing annual claims of the credit so as to meet estimated amounts.

(↔)

(l) (1) Notwithstanding Section 19542, on or before October 1, 2019, GO-Biz shall provide to the Legislative Analyst's Office a report on the credits allocated pursuant to this section for the 2018-19 fiscal year. This report shall include the following:

(A) A detailed description of the methodology used to evaluate applications and allocate credits as described by Section 8030 of Title 10 of the California Code of Regulations, or any successor regulation.

(B) For each taxpayer that applies for a credit, a list that includes the applicant's name, "aggregate employee compensation," "aggregate investment," and "cost-benefit ratio" as those terms are defined for purposes of, or used in, Section 8030 of Title 10 of the California Code of Regulations.

(C) For each written agreement recommended to the committee pursuant to this section, a detailed justification for GO-Biz's decision to enter into a written agreement with the taxpayer.

(2) (A) On or before April 1, 2020, the Legislative Analyst's Office shall provide to the Assembly Committee on Revenue and Taxation, the Senate Committee on Governance and Finance, the budget committees of both houses, and the public with a report evaluating the report required by paragraph (1).

(B) GO-Biz, the Franchise Tax Board, and all other relevant state agencies shall provide additional information, as specified by the Legislative Analyst's Office, as needed to research the reports required by this subdivision.

(C) Any information received by the Legislative Analyst's Office pursuant to this subdivision, that has not otherwise been made public, shall be considered confidential taxpayer information subject to Section 19542.

(D) The Legislative Analyst's Office may publish statistics in conjunction with the reports required by this subdivision that are derived from information provided to the Legislative Analyst's Office pursuant to this section, if the published statistics are aggregated to prevent the identification of particular taxpayers under this part.

(⊕)

(m) This section is repealed on December 1, 2030.