

Chapter 13 is added to Title 10 of the California Code of Regulations to read:

Chapter 13. Governor's Office of Business and Economic Development

Article 1. California Competes Tax Credit

Section 8000 Definitions.

For purposes of this article, the following definitions shall apply:

(a) (1) "Aggregate employee compensation package" means the sum of the compensation package for each new full-time employee, as determined pursuant to paragraph (2), for the first taxable year in which the agreement is effective, and the four subsequent taxable years.

(2) The number of new full-time employees shall be determined on an annual full-time equivalent basis and shall be compared with the total number of full-time employees employed in this state by the applicant during the base year, determined on the same basis.

(b) "Aggregate investment package" means the sum of the investment for the first taxable year in which the agreement is effective, and the four subsequent taxable years, in addition to any investment up to one year prior to the application date.

(c) "Agreement" or "California competes tax credit agreement" means the agreement as negotiated between the applicant and GO-Biz prescribing the terms and conditions that must be met in order to award the applicant an allocation.

(d) "Allocation" means the portion of the allocated tax credit for the then-current fiscal year awarded by the committee to an applicant.

(e) "Allocation period" means the taxable years the credit requested by the applicant will be allowed.

(f) "Annual full-time equivalent" means either of the following:

(1) In the case of a full-time employee paid hourly wages, "annual full-time equivalent" means the total number of hours worked for the applicant by the employee during the taxable year, not to exceed 1,750 hours per employee, divided by 1,750.

(2) In the case of a salaried full-time employee, “annual full-time equivalent” means the total number of weeks worked for the applicant by the employee during the taxable year, not to exceed 50, divided by 50.

(g) “Applicant” means any taxpayer, including but not limited to an individual, corporation, or partnership, submitting a California competes tax credit application to GO-Biz for tax credit allocation consideration and must be a person or entity legally authorized to do business in California or will incorporate, qualify or register with the Secretary of State to do business in California prior to the execution of the California competes tax credit agreement.

(h) “Application” means the request by an applicant for a tax credit allocation by submitting the information as specified in the application form.

(i) “Application form” means the California competes tax credit application form which will contain the information requested in section 8030 and will be available on the website.

(j) “Application period” means the period during a fiscal year designated by the director when applications will be accepted, reviewed and awarded.

(k) “Base year” means the 2013 taxable year, for an applicant who first hires an employee in California pursuant to an agreement in the 2014 taxable year. In the case of an applicant who first hires an employee in California pursuant to an agreement in a taxable year beginning on or after January 1, 2015, the base year means the taxable year immediately preceding the taxable year in which the employee was first hired by the applicant in California. For applicants who first commence doing business in California during the taxable year, the number of full-time employees for the base year shall be zero.

(l) “Benefits” means health, medical, dental and vision premiums paid by an applicant on behalf of an employee. Benefits do not include amounts paid for dependents or “fringe benefits” as defined in this section.

(m) “California competes credit” or “credit” means the total amount of tax credit requested by an applicant in the application.

(n) “California competes tax credit committee” or “committee” means the committee established under Revenue and Taxation Code section 18410.2.

(o) "Compensation package" means the salary a full-time employee is paid per year by the applicant plus the value of the benefits for the full-time employee that is paid per year by the applicant.

(p) "Current assets" means the value of all assets of the applicant that are reasonably expected to be converted into cash within one year in the normal course of business. Current assets include cash, accounts receivable, inventory, marketable securities, prepaid expenses and other liquid assets that can be readily converted to cash.

(q) "Current Liabilities" means the applicant's debts or obligations that are due within one year. Current liabilities appear on the applicant's balance sheet and include short term debt (less than one-year), accounts payable, accrued liabilities and other debts.

(r) "Director" means the director of GO-Biz, or his or her designee.

(s) "Directly related" means actions, purchases, or the like made in connection with the project and would not have been otherwise purchased or incurred but for the project.

(t) "Economic impact" means the impact of a project or business on a region, and may include, but not be limited to the review of the type of industry, type of jobs created, potential for growth, saturation in a particular market or saturation of a type of industry or job in a particular region, indirect job creation, temporary jobs and any other similar factors.

(u) "Fringe benefits" means health, medical, dental and vision premiums paid by an applicant for an employee's dependents, any fringe benefit taxable to the employee under the Revenue and Taxation Code provided to the employee by the applicant, and any non-taxable benefits such as, but not limited to, paid parking, public transportation supplement, gym subsidy, and continuing education.

(v) "Full-time employee" means an individual that is paid wages for services in this state of not less than an average of 35 hours per week.

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

(x) "Investment" means the value of all personal property and real property acquired by the applicant no more than one year prior to the application date directly related to

the project and any other personal property or real property acquired on and after the application date directly related to the project.

(y) "Material litigation" means any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's financial health and would be required to be referenced in the applicant's annual audited financial statements (if audited financial statements are required), or would be the type of information that is reported to shareholders, members or similar individuals or in documents about the financial condition of the applicant or would be deemed material information that an investor or person providing any capital or investment in the entity would deem material in making a financial decision regarding the applicant.

(z) "Personal property" means property other than real property that is tangible, movable property, including, but not limited to vehicles, movable fixtures, equipment, electronic devices purchased for the business use of the applicant, intangible property, including, but not limited to software licenses, intellectual property acquired in connection with the project that has a quantifiable value and other business assets which are subject to depreciation under Internal Revenue Code section 167(a) or depreciable property that is expense under Internal Revenue Code section 179.

(aa) "Project" means the applicant's proposed business venture, investment or expansion that is the basis for the allocation.

(bb) "Project financing" means financing that the applicant may rely on to fund the project which may include but not be limited to loans through banks or other financial institutions, lines of credit, stock issuance, private equity, grants, venture capitalist investment, or any other financing forms of credit

(cc) "Real property" means any property that is attached directly to land, as well as the land itself that is used in connection with the project. Real property includes, but is not limited to all land, structures, firmly attached and integrated equipment (such as light fixtures or a well pump), anything growing on the land, and all other "interests" in the property which may be the right to future ownership (remainder), right to occupy for a period of time (tenancy or lease) or an easement across another's property. With the exception of the land itself, real property includes structures and other business assets affixed to the land that are subject to depreciation under Internal Revenue Code section

167(a) or depreciable property expensed Internal Revenue Code section 179. Real property also includes capitalized costs related to new construction, reconstruction or expansion of buildings or other structures which will be used in the applicant's trade or business in connection with the project and will be subject to depreciation under Internal Revenue Code section 167(a) or depreciable property that will be expensed under Internal Revenue Code section 179. Real property does not include idle bare land held for investment purposes.

(dd) "Salary" means the amount of monetary compensation a full-time employee is paid by the applicant per year and does not include tips, overtime, bonuses, benefits or other compensation of any kind. If an employee is paid based on an hourly wage, then salary means the hourly wage multiplied by thirty-five hours multiplied by fifty weeks.

(ee) "Small business" means a trade or business that has aggregate gross receipts, less returns and allowances reportable to this state, of less than two million dollars (\$2,000,000) during the previous taxable year. "Gross receipts, less returns and allowances reportable to this state," means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Revenue and Taxation Code section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Revenue and Taxation code Section 25120.

(ff) "Strategic Importance" means the value of the type of business to be developed in a particular region due to lack of current presence of the type of business or industry, the assistance to the local job market or potential-employment pool, the growth of a particular region, the will of the community to accept the business or industry and any other similar factors.

(gg) "Website" means the GO-Biz website found at www.business.ca.gov.

(hh) "Working capital" means the applicant's operating liquidity determined by subtracting the applicant's current liabilities from the applicant's current assets.

Section 8010 Tax Credit.

The applicant shall set forth its requested California competes credit amount in the application form, subject to the limitations set forth in the Revenue and Taxation Code sections 17059.2 and 23689, which limit the amount of tax credit available to each

applicant to no more than twenty percent of the aggregate amount of tax credit available each fiscal year.

Section 8020 Announcement of Application Deadlines and Committee Meetings.

- (a) The director will announce the application period for the California competes tax credit prior to each new fiscal year on the website, except in fiscal year 2013-14, where the director will make the announcement, as soon as practical after (OAL insert the effective date of these regulations here).
- (b) The announcement will state:
 - (1) The application period;
 - (2) The deadline to submit applications for each application period;
 - (3) The dates when the committee will hold meetings to approve or reject agreements;
 - (4) The tax credits available during each application period.
- (c) The director may re-schedule or amend any previously announced application period, deadline to submit applications and tax credits available by providing notice on the website and may re-schedule, relocate or amend any previously announced committee meeting so long as the information is posted on the website at least ten days before the scheduled meeting.
- (d) The director may announce multiple application periods in a fiscal year to ensure the available tax credits are not exhausted entirely in the beginning of a fiscal year and may set forth the tax credit amount for each application period, which may be bi-annually, quarterly, monthly or as determined by the director. For example, if the total tax credit available for the 2013-14 fiscal year is \$30 million and there are two application periods, with two committee meetings held during that fiscal year, for each review period \$15 million in credits will be available, with \$3.75 million reserved for small businesses and \$11.25 million available for all other applicants. Revenue and Taxation Code sections 17059.2 and 23689 require that 25 percent of the aggregate amount of the tax credit be reserved for small businesses. Any credits not awarded during the application period shall carry over to the next application period.

Section 8030 Application Process for Tax Credit Allocation.

(a) Applicants shall create a login and password as designated on the website and may be asked to provide some or all of the following information as directed on the website:

- (1) Applicant or entity name (legal name and any other dba's), including the type of legal entity
- (2) State of incorporation or organization, if applicable
- (3) Entity Identification Number: California Corporation Number, Federal Identification Number, Social Security Number
- (4) Contact information (address, contact person, phone numbers, email address)
- (5) Amount of California competes credit requested
- (6) Proposed timeframe for when applicant would like the California competes credit to be provided (i.e. over which taxable years and whether the credit will be taken equally over the course of the proposed period or more heavily-weighted in other taxable years)
- (7) Certification whether applicant qualifies as a small business
- (8) Consultant company name and contact information, if applicable
- (9) Consultant company Identification Number if applicable: California Corporation Number, Federal Identification Number, Social Security Number
- (10) Disclose whether payment to consultant is influenced by whether a credit is awarded
- (11) Cost of services for consultant
- (12) Identify parent company, if applicable
- (13) Identify whether applicant is publicly trade
- (14) Identify affiliated corporations as defined in Internal Revenue Code Section 1504, if applicable

- (15) If the applicant has an affiliated corporation, identify the percentage of the affiliated corporation owned by the applicant, or the percentage of the applicant owned by its affiliated corporation.
- (16) Names of any person authorized by applicant to communicate with GO-Biz and contact information, if not yet provided in the application form
- (17) List of entities or persons with at least 5% ownership in the applicant and the amount of the percentage and identify whether relationship with Applicant (e.g. management, investment)
- (18) Applicant's North American Industry Classification System ("NAICS") Code.
- (19) Proposed project NAICS Code
- (20) Date applicant's business established
- (21) Date applicant commenced or will commence business in California
- (22) Location of applicant's headquarters
- (23) Number of employees in California
- (24) Number of employees in US (list states and number of employees in each state)
- (25) Number of employees worldwide (list countries and number of employees in each country)
- (26) If applicable, please provide an entity relationship chart, including all operations in California and number of employees in each entity
- (27) Description of proposed project
- (28) Describe if project is for business growth, retention or relocation
- (29) Describe any loss of full-time jobs associated with project and reasons there will be job losses in connection with the project either in California or out of state.
- (30) Location and number of full-time jobs affected by the project (additions, consolidations or lay-offs)
- (31) Describe project timeline
- (32) Describe whether any permits are needed for the project and whether they are approved, pending or are yet to be applied for.

- (33) Describe project financing, if applicable, and whether provided by venture capital, banking institution, other grants, private equity or other type of structure
- (34) Working capital available for project
- (35) Provide additional information about funding and expected costs that have not yet been requested and that applicant deems would be material to share on the application
- (36) Number of new full-time jobs, determined on an annual full time equivalent basis, to be employed by the applicant for each taxable year over five taxable years in connection with the project
- (37) Aggregate employee compensation package
- (38) Type of full-time jobs to be created (educational, manual labor, engineering, entry-level, managerial etc.)
- (39) Average salary of each full-time Job
- (40) Average benefit of each full-time Job
- (41) Amount of Investment one-year prior to the application and each taxable year over five taxable years (Aggregate Investment Package)
- (42) Date of anticipated hire of employees
- (43) Disclose whether applicant is looking at relocating to another state
- (44) Disclose if applicant expects to claim the New Employment Credit under Revenue & Taxation Code sections 17053.74 or 23626, and the estimated amount of credit to be claimed during each taxable year over five taxable years
- (45) Disclose if applicant expects to utilize the Sales Tax Exemption under Revenue & Taxation Code section 6377.1 and the estimated amount of exemption each taxable year over five taxable years
- (46) Disclose any other incentives or credits available or offered to the applicant in the state, including state, local and other entities
- (47) Disclose any material litigation
- (48) Describe any fringe benefits provided to employees (only if the applicant would like GO-Biz to consider this factor)

- (49) Identify the type of employee (management, support staff, etc.), and the value associated with each Fringe Benefit type (e.g. parking reimbursement is \$100/month, 401K match is 3% of an employee's salary)
 - (50) Certify applicant does not owe on any delinquent California state tax liabilities, or is in an approved installment agreement by the respective tax agency.
- (b) Applications shall be completed and submitted online as provided for on the website and the applicant must represent and warrant that all statements in the application are true and complete to the best of the applicant's knowledge and such representation and warranty is being made by an authorized representative of the applicant who is the most knowledgeable of the project. The applicant may be required to certify any information provided in the application by electronic signature or the equivalent.
- (c) Based on the information requested in the application, GO-Biz will implement a two-phase review process.
- (d) (1) Phase I. Phase I is an automated phase in which the applicant's amount of tax credit requested, aggregate employee compensation package and aggregate investment package provided on the application form will be evaluated to determine the rate of return. The aggregate employee compensation package will be added to the aggregate investment package and the sum of these two numbers will be the total package proposal by the applicant. The amount of the California competes credit requested by the applicant will be divided by the total package proposal to create the cost-benefit ratio of the credit requested to total package proposal provided. Each applicant will be listed according to the lowest percentage of the cost-benefit ratio, with the lowest percentage being positioned the highest and so forth. Based on this order, GO-Biz will then work down the list and engage the most competitive applicants to move forward to Phase II, specifically including a pooled review of the most competitive applicants whose aggregate California competes credit requested is at least two-hundred percent

of the tax credit available for the application period. For example, if the amount of tax credit available in an application period is \$30 million, GO-Biz will review the most competitive applicants whose aggregate California competes credit requested is \$60 million.

- (2) Notwithstanding paragraph (1), GO-Biz may move an applicant to Phase II if the owner, president, chief executive officer, chief financial officer or other equivalent person of the applicant certifies in writing to GO-Biz that absent consideration for the tax credit the applicant is at risk of terminating or relocating all or a portion of its employees in this state to another state.

(e) Phase II. GO-Biz shall evaluate the applicants moved into Phase II based on the following factors:

- (1) Extent of unemployment or poverty in the area according to the United State Census in which the applicant's project is proposed or located as supplemented by the information provided by California's Employment Development Department on <http://www.labormarketinfo.edd.ca.gov/> or the equivalent website, as it may change from time to time.
- (2) Whether incentives are available to the applicant in other states
- (3) Economic impact in the state.
- (4) Strategic importance of the applicant's project or business in the state, region or locality.
- (5) Number of existing employees expected to be retained in California related to the project.
- (6) Opportunity for future growth and expansion in the state.
- (7) The overall package of fringe benefits provided by the applicant to its employees.
- (8) Any other information requested in the application not evaluated in Phase I.
- (9) GO-Biz may request financial statements and other relevant business documents related to the project in Phase II to confirm or verify any information provided in Phase I.

(f) Readiness and site control. Depending on the type of project submitted by an applicant, if readiness and site control are factors in the evaluation as to whether a tax credit will be awarded, site control may be evidenced by any of the following:

- (1) Fee title held by applicant
- (2) Executed lease agreement or lease option
- (3) Executed development agreement
- (4) Valid purchase and sale agreement or contingent purchase and sale agreement, or lease or the equivalent

(g) Evidence. GO-Biz may ask an applicant to provide supplemental information that substantiates the information provided for in the application. The applicant may be asked to submit the information electronically or in hard-copy as designated by GO-Biz. Upon review of such documentation, if GO-Biz determines that documentation is insufficient to support the information provided for in the application, GO-Biz will request that the applicant provide additional information. If the applicant fails to provide the additional information to the satisfaction of GO-Biz, GO-Biz will place the application on hold until the appropriate documentation is provided or until the then-current application period expires.

(h) Amending and withdrawal of an application. If an applicant intends to revise a portion of a previously submitted application form, applicant will notify GO-Biz via the website and either withdraw the pending application and submit a new one or provide an amendment to the existing application. An applicant may withdraw a pending application at any time prior to committee approval by submitting a request for application withdrawal on the website.

(i) Negotiation. At the discretion of GO-Biz, Go-Biz will contact applicant to schedule telephone conferences, video-conferencing, in-person meetings or

other similar types of modes of communication to negotiate the terms and conditions of the tax credit agreement. Negotiations will be based on the following factors:

- (1) The number of jobs the applicant will create or retain in this state.
 - (2) The compensation paid or proposed to be paid by the applicant to its employees, including wages and fringe benefits.
 - (3) The amount of investment in this state by the applicant.
 - (4) The extent of unemployment or poverty in the area according to the United States Census in which the applicant's project or business is proposed or located.
 - (5) The incentives available to the applicant in this state, including incentives from the state, local government, and other entities.
 - (6) The incentives available to the applicant in other states.
 - (7) The duration of the proposed project and the duration the applicant commits to remain in this state.
 - (8) The overall economic impact in this state of the applicant's project or business.
 - (9) The strategic importance of the applicant's project or business to the state, region, or locality.
 - (10) The opportunity for future growth and expansion in this state by the applicant's business.
 - (11) The extent to which the anticipated benefit to the state exceeds the projected benefit to the applicant from the tax credit;
- (j) If any quantifiable information (e.g. number of jobs) provided by the applicant in Phase I is reduced by more than five percent during negotiations, GO-Biz may reject the application.
- (k) Pending applications shall not be eligible for a tax credit. Applications will be deemed pending if any information requested by GO-Biz is not provided within the requested timeframe or GO-Biz and applicant fail to reach an agreement.

GO-Biz will notify applicants of a pending application and if not cured will not be considered until the deficiency is cured.

- (l) If an applicant is not awarded any allocation in the then-current application period, the applicant will be considered in the next application period of that fiscal year, unless applicant withdraws its application.
- (m) Upon commencement of a new fiscal year, any application submitted and not awarded during the prior fiscal year will expire and applicants will need to submit a new application for consideration during the next application period of the then-current fiscal year.

Section 8040 Agreement.

- (a) The amount of tax credit allocated to an applicant shall be as set forth in the California competes tax credit agreement between GO-Biz and the applicant.
- (b) The California competes tax credit agreement will specify the taxable year or years for which the tax credit allocated shall be allowed and will specify the minimum compensation level to be provided to each employee and set the minimum job retention period.
- (c) GO-Biz and applicant will negotiate as to whether the tax credit will be provided in full upon approval or in increments based on mutually agreed upon milestones when satisfactorily met by the applicant, which may include, but not be limited to a certified public accountant's audit of the applicant's financial records to determine whether the applicant satisfied the agreed upon hiring of a set number of annual full-time equivalent employees, the benefits agreed to be offered to such hires and other similar objective criteria .
- (d) The California competes tax credit agreement will contain provisions that will recapture the tax credit in whole or in part, if the applicant fails to fulfill the terms and conditions of the written agreement.
- (e) Upon final execution of the California competes tax credit agreement by GO-Biz and an applicant, GO-Biz will provide a written summary of the terms and

conditions of the agreement, and the full agreement to the committee at least ten days before the scheduled committee meeting.

Section 8050 Committee Meeting

- (a) The committee will either approve or reject the California competes tax credit agreement recommended by GO-Biz.
- (b) The committee will either approve or reject any recommendations made by GO-Biz to recapture any previously awarded tax credits due to the applicant's failure to satisfy the terms and conditions of the California competes tax credit agreement.
- (c) If a committee member is unable to participate in person, committee members may participate remotely through telephonic, video or other electronic means and such participation will count towards satisfying quorum requirements. Participation through such alternative means will be equivalent to in-person participation and any action or vote taken remotely shall constitute a valid vote or action.
- (d) A quorum is necessary for the committee to take any action. The committee consists of five members as set forth in section 18410.2 of the Revenue and Taxation Code, three committee members shall constitute a quorum and the affirmative vote of two members shall be necessary for any action to be taken by the committee.
- (e) Committee meetings proceedings will be recorded, transcribed or captured in some equivalent method and minutes will be created and will be presented for approval at a subsequent meeting of the committee.

Section 8060 Website Posting

- (a) GO-Biz shall post on its Website all of the following within five business days of approval by the committee:

- (1) Name of each applicant allocated a tax credit pursuant to Revenue and Taxation Code Sections 17059.2 and 23689.
- (2) The estimated amount of the investment by each applicant.
- (3) The estimated number of jobs created or retained by each applicant.
- (4) The amount of tax credit allocated to the applicant.
- (5) The amount of the tax credit recaptured from the applicant, if applicable.

Section 8070 Notice to and duties of the Franchise Tax Board

- (a) Upon approval by the committee, GO-Biz will provide the negotiated agreements to the Franchise Tax Board in the form and manner agreed to by the Franchise Tax Board and GO-Biz. The Franchise Tax Board will also have access to the application and any and all documentation provided by the applicant or prepared or relied on by GO-Biz or the committee in the decision to approve a contract and allocate a credit. The Franchise Tax Board shall also have access to any and all information and documentation provided by the applicant after a credit is allocated.
- (b) For any business other than a small business, the Franchise Tax Board shall review the books and records of all applicants allocated a credit pursuant to the agreement to ensure compliance with the terms and conditions of the agreement between the applicant and GO-Biz.
- (c) In the case of an applicant that is a small business, a review of the books and records of the applicant shall be made when, in the sole discretion of the Franchise Tax Board, a review of those books and records is appropriate. If the Franchise Tax Board exercises its discretion to review the book and records of an applicant that is a small business, the review will be conducted to ensure compliance with the terms and conditions of the written agreement between the applicant and GO-Biz.
- (d) The form and manner of the review of the books and records to ensure compliance with the terms of the agreement shall be at the sole discretion of the Franchise Tax Board. These reviews will not be treated as an audit of the tax

return under Part 10.2 (commencing with section 18401) of the Revenue and Tax Code and the regulations thereunder, and will not preclude the Franchise Tax Board from auditing any issue in any taxable year, including a taxable year included in the term of the contract.

- (e) If during the review of the books and records, Franchise Tax Board determines there is a material breach of the written agreement by the applicant, the Franchise Tax Board shall notify GO-Biz and provide detailed information regarding the basis for that determination.
- (f) Upon approval by the committee of a recapture, GO-Biz will provide the terms and amount of recapture, in whole or in part, of a previously allocated credit to the Franchise Tax Board in the form and manner agreed to by the Franchise Tax Board and GO-Biz.