

**State of California
Office of Administrative Law**

In re:
**Governor's Office of Business and Economic
Development**

Regulatory Action:

Title 10, California Code of Regulations

**Adopt sections: 8000, 8010, 8020, 8030,
8040, 8050, 8060, 8070**

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL File No. 2014-0210-01 E

The Governor's Office of Business and Economic Development (GO-Biz) submitted this emergency action to adopt eight sections under a new article and chapter in title 10 of the California Code of Regulations to implement Revenue and Taxation Code sections 17059.2, 18410.2, and 23689, which establishes the California Competes Tax Credit program. Pursuant to those sections, GO-Biz is authorized to administer, on or after January 1, 2014, a tax credit against the "net tax" or the "tax," as defined in Revenue and Taxation Code section 17039 and section 23036, respectively, owed by a taxpayer. The purpose of this legislation and the implementing regulations is to provide incentives for businesses to stay in California and to attract out-of-state businesses to move to California, for existing California businesses to expand, and to stimulate job growth.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 2/20/2014 and will expire on 8/20/2014. The Certificate of Compliance for this action is due no later than 8/19/2014.

Date: 2/20/2014



Richard L. Smith
Senior Counsel

For: DEBRA M. CORNEZ
Director

Original: Kish Rajan
Copy: Grace Arupo Rodriguez

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2014-0210-01E
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2014 FEB 10 PM 3:44
 OFFICE OF ADMINISTRATIVE LAW

ENDORSED FILED
 IN THE OFFICE OF
 2014 FEB 20 PM 2:22

Debra Bowen
 DEBRA BOWEN
 SECRETARY OF STATE

NOTICE	REGULATIONS
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AGENCY FILE NUMBER (if any)

AGENCY WITH RULEMAKING AUTHORITY
 Governor's Office of Business and Economic Development (GO-Biz)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) California Competes Tax Credit	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT Title 10, Chapter 13, Section 8000 et seq: 8000, 8010, 8020, 8030, 8040, 8050, 8060, 8070
	AMEND per agency request <i>PS</i>
	REPEAL
TITLE(S) Title 10	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Grace Arupo Rodriguez	TELEPHONE NUMBER 916-322-0673	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) grace.arupo-rodriguez@gov.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Kish Rajan</i>	DATE 2/10/2014
TYPED NAME AND TITLE OF SIGNATORY Kish Rajan, Director of the Governor's Office of Business and Economic Development	

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ENDORSED APPROVED

FEB 20 2014

Office of Administrative Law

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 salaries for each new full-time employee employed in this state by the applicant, 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 an annual full-time equivalent 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.

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(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.

(3) For purposes of this subdivision, the use of the term "worked" means the number of hours or weeks for which an employee receives paid wages including, but not be limited to paid vacation, sick leave, or holidays.

(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 that shall 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 shall contain the information requested in section 8030 and shall be available on the website.

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(j) "Application period" means the period during a fiscal year designated by the director when applications shall 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 in which an application is filed, 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 any of the following:

(1) an employee;

(2) an employee's spouse;

(3) an employee's dependents.

(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) "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.

(p) "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.

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

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

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

(t) "Fringe benefits" means any taxable or non-taxable amenity provided to the employee by the applicant including, but not limited to, group-term life insurance coverage, childcare and assistance reimbursement, employee discounts, personal use of a company owned vehicle, paid parking, public transportation supplement, gym subsidy, and education reimbursement.

(u) "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.

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

(w) "Investment" means the amount paid for all personal property and real property acquired or leased by the applicant no more than one year prior to the date the application is filed that is directly related to the project and any other personal property or real property acquired or leased on and after the date the application is filed that is directly related to the project.

(x) "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, 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.

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(y) "Personal property" means property, other than real property, placed in service in this state by the applicant, 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 will be expensed under Internal Revenue Code section 179.

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

(aa) "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 form of financing.

(bb) "Real property" means any property located in this state 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 under 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 is depreciable property that will be expensed under Internal Revenue Code section 179. Real property does not include idle bare land held for investment purposes.

(cc) "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.

(dd) "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 Revenue and Taxation Code section 25120(a), and the gross receipts from the production of nonbusiness income, as defined in Revenue and Taxation code section 25120(d).

(ee) "Strategic importance" means the value of the type of business to be developed in the state or a particular region or locality due to lack of current presence of the type of business or industry, the assistance to the employment market or

potential-employment pool, the growth of a particular region or locality, the will of the community to accept the business or industry, and any other similar factors.

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

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

Note: Authority cited: Sections 17059.2 and 23689, Revenue and Taxation Code.

Reference: Sections 17059.2, 18410.2 and 23689, Revenue and Taxation Code.

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.

Note: Authority cited: Sections 17059.2 and 23689, Revenue and Taxation Code.

Reference: Sections 17059.2, 18410.2 and 23689, Revenue and Taxation Code.

Section 8020. Announcement of Application Deadlines and Committee Meetings.

(a) The director shall announce the application period or periods for the California competes tax credit prior to each new fiscal year on the website, except in fiscal year 2013-14, where the director shall make the announcement, as soon as practicable after February 20, 2014.

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(b) The announcement shall state:

(1) The application period(s);

(2) The deadline to submit applications for each application period;

(3) The dates when the committee will hold meetings to approve or reject agreements; and

(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 the total tax credits available during each application period by providing notice on the website, and may re-schedule,

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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) Any credits not awarded during the application period shall carry over to the next application period.

Note: Authority cited: Sections 17059.2 and 23689, Revenue and Taxation Code.

Reference: Sections 17059.2, 18410.2 and 23689, Revenue and Taxation Code.

Section 8030. Application Process for Tax Credit Allocation.

(a) In the event the director announces at the beginning of a fiscal year that applications must be submitted online, applicants shall create a login and password as designated on the website.

(b) Applicants shall be asked to provide some or all of the following information as directed on the application form, which may be divided into multiple phases:

(1) Applicant or entity name (legal name and any other doing business as names), including the type of legal entity;

(2) State of incorporation or organization, if applicable;

(3) Entity Identification Number: California Corporation Number, Federal Employer Identification Number, Social Security Number;

(4) Contact information (address, contact person, phone numbers, e-mail 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 the credit would be allowed);

(7) Certification whether applicant qualifies as a small business;

(8) Consultant company name and contact information (address, contact person, phone numbers, e-mail address), if applicable;

(9) Consultant company Identification Number, if applicable: California Corporation Number, Federal Employer Identification Number, Social Security Number;

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- (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 traded;
- (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 (address, contact person, phone numbers, e-mail address);
- (17) List of entities or persons with at least 25% ownership in the applicant, the amount of the percentage and identify the relationship with applicant (e.g., management, investment);
- (18) Applicant's North American Industry Classification System ("NAICS") Code;
- (19) Proposed project NAICS Code;
- (20) Year 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 the United States (list states and number of employees in each state);
- (25) Number of employees worldwide;
- (26) If applicable, provide an entity relationship chart, including all operations out of the state and in California and the number of employees in each entity;
- (27) Description of proposed project, including whether it is for business growth, retention, or relocation;

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- (28) Describe any loss of full-time employment associated with project and reasons there will be employment losses in connection with the project either in California or out of state;
- (29) Location and number of full-time employees affected by the project (additions, consolidations, or lay-offs);
- (30) Describe project timeline;
- (31) Describe whether any permits are needed for the project and whether they are approved, pending, or are yet to be applied for;
- (32) Describe project financing, if applicable, and whether provided by venture capital, banking institution, other grants, private equity, or other type of financing structure;
- (33) Working capital available for project;
- (34) 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;
- (35) Number of new full-time employees, 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;
- (36) Aggregate employee compensation package;
- (37) Type of full-time employment to be created (educational, manual labor, engineering, entry-level, managerial, etc.);
- (38) Average salary of each full-time employee;
- (39) Average benefit and fringe benefit of each full-time employee;
- (40) Date of anticipated hire of full-time employees;
- (41) Amount of investment one year prior to the application date and each subsequent taxable year over five taxable years (aggregate investment package);
- (42) Disclose whether applicant is looking at relocating to another state;
- (43) Disclose if applicant expects to claim the New Employment Credit under Revenue and Taxation Code sections 17053.74 or 23626, and the

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estimated amount of credit to be claimed during each applicable taxable year;

(44) Disclose if applicant expects to utilize the Sales Tax Exemption under Revenue and Taxation Code section 6377.1 and the estimated amount of exemption for each applicable taxable year;

(45) Disclose any other incentives or credits available or offered to the applicant in the state, including state, local, and other entities;

(46) Disclose any material litigation;

(47) Describe any benefit and fringe benefits provided to full-time employees (only if the applicant would like GO-Biz to consider this factor);

(48) Identify the type of employee (management, support staff, etc.), and the value associated with each benefit and fringe benefit type (e.g., parking reimbursement is \$100/month, 401K match is 3% of an employee's salary);

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(49) Certify applicant does not owe on any delinquent California state tax liabilities, or is in an approved installment agreement by the respective tax agency.

(c) Applications shall be completed by using the application form designated by the director at the beginning of each fiscal year, which may require applications be submitted in paper or electronic form.

(d) In all applications, the applicant must represent and warrant that all statements in the application are true and complete to the best of the applicant's knowledge. Such representation and warranty must be made by a person who is most knowledgeable of the project. The applicant may be required to certify any information provided in the application by written, electronic signature, or the equivalent.

(e) Any information submitted to GO-Biz that the applicant considers to be a trade secret, confidential, privileged or otherwise exempt from disclosure under the Public Records Act (California Government Code section 6250, et seq.) shall not be publically disclosed by GO-Biz unless it is required to do so by court order or applicable law. An applicant shall assert a claim of exemption by identifying each

of the items to be restricted and the section of law that provides for the exemption (e.g., Government Code section 6254.15) at the time its application form is submitted to GO-Biz. In the event GO-Biz is required to publically disclose information identified by the applicant as a trade secret, confidential, privileged, or otherwise exempt from disclosure, GO-Biz shall notify the applicant at least five (5) business days prior to the release of such information in order to allow the applicant to seek an injunction, as applicable, unless a court order or the equivalent prevents such timely notice.

(f) Based on the information requested in the application, GO-Biz shall implement a two-phase review process.

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(g) (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 shall be evaluated to determine the rate of return. The aggregate employee compensation package shall 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 shall be divided by the total package proposal to create the cost-benefit ratio of the credit requested to total package proposal provided. Each applicant shall 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 shall 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 at least \$60 million. Notwithstanding the foregoing, 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.

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

(A) Extent of unemployment or poverty in the area according to the United States 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;

(B) Whether incentives are available to the applicant in other states;

(C) Economic impact in the state;

(D) Strategic importance of the applicant's project or business in the state, region or locality;

(E) Number of existing employees expected to be retained in California related to the project;

(F) Opportunity for future growth and expansion in the state;

(G) The benefits and fringe benefits provided by the applicant to its employees;

(H) Any other information requested in the application;

(3) 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 the application.

(h) 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.

(i) Evidence. GO-Biz shall ask an applicant to provide supplemental information that substantiates the information provided in the application, as needed. The applicant

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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 in the application, GO-Biz shall request that the applicant provide additional information. If the applicant fails to provide the additional information to the satisfaction of GO-Biz, GO-Biz shall place the application on hold until the appropriate documentation is provided or until the then-current application period expires.

(j) Amending and withdrawal of an application. If an applicant intends to revise a portion of a previously submitted application form, the applicant shall notify GO-Biz via the website and either withdraw the application and submit a new one or provide an amendment to the existing application. An applicant may amend an application form at any time until the last day for applications to be submitted during the application period. An applicant may withdraw an application at any time prior to committee approval by submitting a request for application withdrawal on the website.

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(k) Negotiation. At the discretion of GO-Biz, GO-Biz may contact the applicant to schedule telephone conferences, video conferences, in-person meetings, or other similar types 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 employment positions 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, benefits, 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, 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.

(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 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.
- per agency request *RS* (11) The extent to which the anticipated benefit to the state exceeds the projected benefit to the applicant from the tax credit.
- (l) If any quantifiable information (e.g., number of employees) provided by the applicant in Phase I is reduced by more than five percent during negotiations, GO-Biz may reject the application.
- (m) Pending applications shall not be eligible for a tax credit. Application shall 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 shall notify applicants of a pending application that, if not cured, shall not be considered for an allocation until the deficiency is cured.
- (n) If an applicant is not awarded any allocation in the then-current application period, the application shall be considered in the next application period of that fiscal year, unless applicant withdraws its application.
- (o) Upon commencement of a new fiscal year, any application submitted in the prior fiscal year and not awarded during the prior fiscal year shall expire. Applicants shall submit a new application for consideration during the next application period of the then-current fiscal year.

Note: Authority cited: Sections 17059.2 and 23689, Revenue and Taxation Code.

Reference: Sections 17059.2, 18410.2 and 23689, Revenue and Taxation Code.

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 shall specify the taxable year or years for which the tax credit allocated shall be allowed and shall specify the minimum compensation level to be provided to new full-time employees. The agreement shall also specify the minimum employee retention period for the applicant's net increase in annual full-time equivalent employees.

(c) GO-Biz and applicant shall negotiate as to whether the tax credit shall 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, an independent certified public accountant's audit of the applicant's financial records to determine whether the applicant satisfied the agreed upon net increase of annual full-time equivalent employees, the benefits agreed to be offered to such employees, the amount of investment made, and other similar objective criteria.

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(d) The California competes tax credit agreement shall contain provisions that shall 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 shall 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.

Note: Authority cited: Sections 17059.2 and 23689, Revenue and Taxation Code.

Reference: Sections 17059.2, 18410.2 and 23689, Revenue and Taxation Code.

Section 8050. Committee Meeting.

(a) The committee shall either approve or reject the California competes tax credit agreement recommended by GO-Biz.

(b) The committee shall 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, he or she may participate remotely by telephone, video conference, or other electronic means. Such participation shall count towards satisfying quorum requirements. Participation through such alternative means shall 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.

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(e) Committee proceedings shall be recorded, transcribed or captured in some equivalent method, and minutes shall be created and shall be presented for approval at a subsequent meeting of the committee.

Note: Authority cited: Sections 17059.2 and 23689, Revenue and Taxation Code.

Reference: Sections 17059.2, 18410.2 and 23689, Revenue and Taxation Code.

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 employees hired 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.

Note: Authority cited: Sections 17059.2 and 23689, Revenue and Taxation Code.

Reference: Sections 17059.2, 18410.2 and 23689, Revenue and Taxation Code.

Section 8070. Notice to and Duties of the Franchise Tax Board.

- (a) Upon approval by the committee, GO-Biz shall 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 shall 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 the agreement 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) Pursuant to Revenue and Taxation Code sections 17059.2(d) and 23689(d), 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 may be made 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. If the Franchise Tax Board exercises its discretion to review the books and records of an applicant that is a small business, the review shall 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 Taxation Code and the regulations thereunder, but 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 agreement.
- (e) If during the review of the books and records, Franchise Tax Board determines there is a possible material breach of the written agreement by the applicant, the

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Franchise Tax Board shall notify GO-Biz and provide detailed information regarding the basis for that determination.

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(f) Upon approval by the committee to recapture a credit, GO-Biz shall provide the terms and amount of recapture to the Franchise Tax Board in the form and manner agreed to by the Franchise Tax Board and GO-Biz.

Note: Authority cited: Sections 17059.2 and 23689, Revenue and Taxation Code.

Reference: Sections 17059.2, 18410.2 and 23689, Revenue and Taxation Code.