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7 **BOARD OF EQUALIZATION**
 8 **STATE OF CALIFORNIA**

10 In the Matter of the Appeal of:) **HEARING SUMMARY²**
 11) **CORPORATION INCOME TAX APPEAL**
 12 **ROSENDIN ELECTRIC, INC.¹**) Case No. 358879
 13)

	<u>IYE</u>	<u>Claim For Refund</u>
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16	12/25/1997	\$16,748
17	12/25/1998	\$114,934
18	12/25/1999	\$213,297
	12/25/2000	\$200,721
	12/25/2001	\$165,404

19 Representing the Parties:

20 For Appellant: Marty Dakessian, Akerman Senterfitt LLP
 21 LaShelle Wilson, California Credits Group LLC

22 For Franchise Tax Board: Ann H. Hodges, Tax Counsel III

24 ¹ Appellant's headquarters is located in San Jose.

25 ² An appeal letter was filed June 22, 2006, but the matter was deferred pending a decision in the *Appeal of Jessica*
 26 *McClintock and Jessica McClintock, Inc.* which was heard by the Board in August 2007. The case was subsequently placed
 27 in active status in September 2007, appellant filed its opening brief in January 2008, a supplemental briefing request was
 28 granted and the briefing period concluded on October 15, 2008. This matter was originally scheduled for oral hearing on
 March 16, 2009, but was deferred due to appellant's scheduling conflict and rescheduled to May 27, 2009. The appeal was
 again postponed from the May 27, 2009, hearing calendar to the August 31 – September 2, 2009, Sacramento calendar to
 allow both parties time to resolve the issues on appeal.

1 QUESTION: Whether appellant has shown that respondent erred by disallowing Enterprise Zone
2 Hiring Credits for workers that appellant claimed as “qualified employees.”

3 HEARING SUMMARY

4 Background Regarding Enterprise Zone Hiring Credits

5 The California Legislature enacted the Enterprise Zone Act (EZA) to stimulate business
6 and industrial growth in economically depressed areas of the state (Gov. Code, § 7071.) The EZA
7 contains regulatory, tax, and other incentives to attract investment into those areas. Any city, county, or
8 city and county with an eligible area within its jurisdiction may apply for designation as an enterprise
9 zone. (EZ) (*Id.*, § 7073, subd. (a).)

10 The enterprise zone hiring credit provides a tax credit to employers operating in an
11 enterprise zone that pay wages to employees who meet specified criteria. (Rev. & Tax. Code,
12 § 23622.7.) One of the requirements of the credit is that the employer obtain a certificate (commonly
13 referred to as a “voucher”) from one of the statutorily approved vouchering agencies certifying that the
14 employee is a “qualified employee” for purposes of the hiring credit. (Rev. & Tax. Code, § 23622.7,
15 subd. (c)(1).) For the period in question, the former California Technology, Trade and Commerce
16 Agency (TTCA) was responsible for administering the vouchering program.³

17 Factual Background

18 Appellant operates in both the San Francisco and San Jose enterprise zones. Appellant
19 did not claim EZ hiring credits on its original returns for income years ending (IYE) 12/25/1997,
20 12/25/1998, 12/25/1999, 12/25/2000 and 12/25/2001. (Resp. Opening Br., p.2 and exhibits A - E.)
21 Appellant filed amended returns (Form 100X) for all five IYEs, claiming EZ hiring credits in the
22 following amounts: \$46,552 for IYE 12/25/97, \$249,751 for IYE 12/25/98, \$357,855 for IYE 12/25/99,
23 \$404,761 for IYE 12/25/2000, and \$456,446 for IYE 12/25/2001. (Resp. Opening Br., p. 2 and exhibits
24 A to E.)

25 Appellant’s San Jose business is located at 880 Mabury Road. When the San Jose
26 enterprise zone was originally designated on October 15, 1986, the 880 Mabury Road location was not
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28 ³ On January 1, 2004, the Housing and Community Development Department (HCD) took over the responsibility for
administering the vouchering program.

1 within that enterprise zone. Effective July 1, 1998, the geographic boundaries of the San Jose enterprise
2 zone were expanded to include the 880 Mabury Road location. (Resp. Opening Br., p. 14.)

3 Appellant originally claimed the EZ hiring credit with respect to approximately 198
4 employees. Respondent initially allowed 110 of the claimed employees and denied 88 of the claims.
5 (Resp. Opening Br., p. 4.) Respondent allowed claims for all employees under the Veteran, Native
6 American and Targeted Employment Area (TEA) categories with the exception of those employees
7 working at appellant's San Jose location who were hired prior to the expansion of the San Jose
8 enterprise zone. (Resp. Supp. Br., p. 2.) Under the category Older Worker (JTPA 10%), respondent
9 allowed 14 and disallowed 58 employees whom respondent determined did not face "a serious barrier to
10 employment". Under a category designated Miscellaneous, respondent allowed 15 and disallowed 11
11 employees. Of those disallowed, respondent determined that six did not qualify as "a dislocated worker,
12 laid off", two employees did not qualify as economically disadvantaged, and three employees did not
13 qualify because they were hired prior to the expansion date of the San Jose enterprise zone. (Resp.
14 Supp. Br., p. 3.)

15 Appellant filed a timely appeal and in its opening brief, appellant challenged the
16 disallowance of 89⁴ vouchers at issue. (App. Opening Br., p. 4.) Respondent subsequently allowed the
17 claims for the remaining 58 employees in the Older Worker (JTPA 10%) category and for the two
18 employees in the economically disadvantaged category. (Resp. Supp. Br., pp. 3-4.) Appellant withdrew
19 its claim for the six employees in the "dislocated worker, laid off" category. Therefore, the remaining
20 disputed vouchers are those disallowed for employees who worked at appellant's 880 Mabury Road
21 location and who were hired before the July 1, 1998 expansion date of the San Jose enterprise zone.⁵

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25 ⁴ The discrepancy between appellant's and respondent's number is as follows: appellant claimed that 23 employee vouchers
26 were disallowed because those employees were hired prior to the expansion date of the San Jose enterprise. However,
27 respondent states that according to its auditor's final schedule, respondent was only able to identify 22 employees that were
disallowed for that reason.

28 ⁵ As stated in footnote 4, appellant believes that it has submitted vouchers for 23 employees but respondent's records reflect
only 22 vouchers. At the hearing, each party should be prepared either to present supporting documentary evidence of its
asserted number or the parties should stipulate to an amount.

1 Contentions

2 Appellant's Contentions

3 Appellant contends that respondent has erroneously disallowed the vouchers based on an
4 incorrect interpretation of the definition of "qualified employee" under R&TC section 23622.7,
5 subdivision (b)(4)(A)(i-iii.) According to appellant, respondent's position is based on the erroneous
6 assumption that "date of original designation" means the date of zone expansion for the purpose of
7 determining whether the employee's date of hire satisfies the requirements of subparagraph (iii) of
8 R&TC section 23622.7, subdivision (b)(4)(A). (App. Opening Br., p. 10.) Appellant acknowledges that
9 appellant's 880 Mabury Road location was not within the boundaries of the San Jose enterprise zone
10 when it was originally designated in 1986 and that the employees in question were all hired after the
11 original designation date but prior to the date of the expansion of the zone in 1998. However, appellant
12 contends that the plain language of the Enterprise Zone Act (Government Code section 7070 through
13 7089), which R&TC section 23622.7, subdivision (b)(4)(A) incorporates by reference, defines an
14 "enterprise zone" as an area designated as such by the [Department of Housing and Community
15 Development] in accordance with the provisions of Section 7073." Appellant further states that
16 Government Code section 7072 provides that "date of original designation" is defined as "the date the
17 eligible area receives designation as an enterprise zone." Even though an enterprise zone may be
18 expanded pursuant to Government Code section 7074, as was the San Jose enterprise zone in 1998,
19 appellant contends that such an expansion does not constitute a newly designated enterprise zone. Thus,
20 appellant contends that the date of original designation, which for the San Jose enterprise zone occurred
21 in 1986, is the operative date for purposes of determining the eligibility of employees based on date of
22 hire. Because the employees at issue were all hired after the date of original designation in 1986,
23 appellant concludes that they are qualified employees. (App. Opening Br., pp. 13-14.)

24 Appellant notes that the statutory limitation on the size of a zone expansion is based on
25 the size of the zone as of the date of original designation. Thus, appellant contends that respondent's
26 interpretation that the date of original designation refers to the date of expansion makes no sense.
27 Appellant also states that within the Enterprise Zone Act the adjective "designated" and its variants are
28 never used to modify the terms "expansion" or "expand". For those reasons, appellant concludes that an

1 expansion of an enterprise zone does not create a new enterprise zone or an “original designation” of the
2 expanded area. (App. Reply Br., pp. 10-11.) Appellant also contends that respondent’s position is
3 inconsistent with legal advice that respondent provided to the Trade and Commerce Agency in 1996 in
4 which respondent’s legal staff opined that a business that moves into an enterprise zone may claim the
5 credit for employees hired prior to the date of the move. (App. Reply Br., p. 11.)

6 Respondent’s Contentions

7 Respondent notes that the “date of original designation” is defined as “the date the
8 eligible area receives designation as an enterprise zone by the department pursuant to this chapter” (Gov.
9 Code, § 7072 (b)(1).) and that an “eligible area” is defined as “an area designated as an enterprise zone
10 pursuant to Chapter 12.8 (commencing with Section 7070), as it read prior to January 1, 1997.” (Gov.
11 Code, § 7072 (c)(1).) Because appellant’s 880 Mabury Road business location was not within the
12 eligible area at the time it was designated as the San Jose enterprise zone, respondent contends that
13 appellant’s interpretation has the effect of treating the date of the expansion as relating back to the date
14 of the original designation of the zone. Respondent contends that relating back the date of the expansion
15 is wrong for two reasons: (1) such an interpretation is contrary to the policy goal of the EZ hiring credits
16 which is to provide an incentive for employers to hire individuals who meet the required economic and
17 social demographic profile and (2) would result in employers in expanded zones being treated more
18 favorably than similarly situated employers who operate in geographic areas that receive new enterprise
19 zone designations. (Resp. Opening Br., p. 15.)

20 Respondent further contends that the applicable regulations provide that an expansion is
21 effective when it is approved and there is no authority in the statute for treating that effective date as
22 relating back to October 15, 1986, the date of the original designation of the enterprise zone.

23 Respondent concludes that the employees at issue do not meet the definition of a “qualified employee”
24 because they were hired prior to the expansion of the San Jose enterprise zone. (Resp. Opening Br., p.
25 16.) With respect to respondent’s legal advice cited by appellant, respondent points out that the advice
26 letter specifically stated that the employees must have been hired after the designation of the applicable
27 enterprise zone. Thus, respondent contends that its current position is entirely consistent with that legal
28 advice. (Resp. Supp. Br., p. 6.)

1 Applicable Law

2 Hiring Credit for Qualified Wages Paid in an Enterprise Zone

3 R&TC section 23622.7, subdivision (a) provides generally that “there shall be allowed a
4 credit against the ‘tax’ (as defined by Section 23036) to a taxpayer who employs a qualified employee in
5 an enterprise zone during the taxable year.” A “qualified employee” is defined, for purposes of the EZ
6 hiring credit, as including an individual who meets the following three requirements:

- 7 (i) At least 90 percent of whose services for the taxpayer during the taxable year are
8 directly related to the conduct of the taxpayer’s trade or business located in an
9 enterprise zone.
10 (ii) Performs at least 50 percent of his or her services for the taxpayer during the
 taxable year in an enterprise zone.
11 (iii) Is hired by the taxpayer after the date of original designation of the area in which
 services were performed as an enterprise zone.

12 (Rev. & Tax. Code, § 23622.7. subd.(b)(4)(A)(i – iii.)

13 Original Designation and Expansion of an Enterprise Zone

14 Under Government Code section 7072, the date of original designation is defined, in
15 relevant part, as “the date the eligible area receives designation as an enterprise zone by the department
16 pursuant to this chapter.” (Gov. Code, § 7072, subd. (b)(1).) “Eligible area” is defined, as “an area
17 designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070), as it read
18 prior to January 1, 1997, or as a targeted economic development area or as a targeted economic
19 development area, neighborhood development area, or program area pursuant to Chapter 12.9
20 (commencing with Section 7080), as it read prior to January 1, 1997.” (Gov. Code, § 7072, subd.
21 (c)(1).) An eligible area also includes a geographic area that fulfills specified criteria indicating a need
22 to alleviate some type of economic distress that exists in that area. (Gov. Code, § 7072, subd. (c)(2) &
 (c)(3).)

23 An expansion of any enterprise zone by 15 percent may be proposed by a city, county or
24 city and county to include definitive boundaries that are contiguous to the enterprise zone. (Gov. Code,
25 § 7074, subd. (a).) The proposed enterprise zone expansion may be approved only if certain specified
26 criteria are met. (Gov. Code, § 7074, subd. (b).)

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1 Staff Comments

2 It appears to staff that the “date of original designation” has a clear meaning set forth in
3 Government Code section 7072 as “the date the eligible area receives designation as an enterprise zone.”
4 Staff agrees with appellant that the date of original designation of the San Jose enterprise zone is
5 October 15, 1986, while the date of expansion marks a separate event in the demarcation of the
6 enterprise zone. Thus, a plain language reading of the third requirement for a qualified employee as
7 defined by R&TC section 23622.7, under subparagraph (iii) of subdivision (b)(4)(A), appears to support
8 that the employees at issue meet that requirement because they were hired “after the date of original
9 designation of the area in which services were performed as an enterprise zone.”

10 While each of the parties’ positions is based on the proper interpretation of the definition
11 of a qualified worker, staff directs the parties’ and the Board’s attention to the general provision for
12 allowance of a hiring credit, subdivision (a) of R&TC section 23622.7, which provides that “there shall
13 be allowed a credit against the ‘tax’ (as defined by Section 23036) to a taxpayer who employs a
14 qualified employee in an enterprise zone during the taxable year.” Thus, the EZ hiring credit is allowed
15 only for the taxable year or years in which the taxpayer employs the qualified employee in an enterprise
16 zone. It appears that the definition of a “qualified employee” supports this interpretation wherein under
17 the second requirement of that definition “[t]he employee must perform at least 50 percent of his or her
18 services for the taxpayer during the taxable year in an enterprise zone.” (Rev. & Tax. Code, § 23622.7,
19 subd. (b)(4)(A)(ii).) In this case, appellant did not employ the employees in issue in the San Jose
20 enterprise zone until July 1, 1998, the effective of the expansion of the zone to include appellant’s 880
21 Mabury Road business location. For that reason, it appears that even if the Board finds that the
22 employees in issue were “qualified employees”, appellant may not be entitled to the hiring credit for
23 those employees any earlier than July 1, 1998.

24 At the hearing, the parties should be prepared to address the application of subdivision (a)
25 of R&TC section 23622.7. In addition, respondent should calculate and be prepared to present the
26 correct amount of the refund if: (1) the Board finds that the remaining disputed vouchers for employees
27 hired before the July 1, 1998 expansion of the San Jose enterprise zone should be allowed; and (2) the
28 correct amount of the refund if the Board finds instead that the remaining employees at issue were

1 qualified employees but that hiring credits may not be allowed for any period prior to July 1, 1998,
2 because they were not employed in the San Jose enterprise zone until that date.

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